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**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SAN FERNANDO VALLEY DIVISION**

In re:

ICPW Liquidation Corporation, a California
corporation¹,

Debtor and Debtor in Possession.

In re:

ICPW Liquidation Corporation, a Nevada
corporation²,

Debtor and Debtor in Possession.

- ☒ Affects both Debtors
- ☐ Affects ICPW Liquidation Corporation, a
California corporation only
- ☐ Affects ICPW Liquidation Corporation, a Nevada
corporation only

Lead Case No.: 1:17-bk-12408-MB
Jointly administered with:
1:17-bk-12409-MB
Chapter 11 Cases

**FIRST SUPPLEMENT TO MOTION IN
SUPPORT OF CONFIRMATION OF
DEBTORS' AND OFFICIAL COMMITTEE
OF EQUITY SECURITY HOLDERS'
JOINT PLAN OF LIQUIDATION DATED
JANUARY 12, 2018; MEMORANDUM OF
POINTS AND AUTHORITIES**

Plan Confirmation Hearing:

Date: February 12, 2018
Time: 1:30 p.m.
Place: Courtroom "303"
21041 Burbank Blvd.
Woodland Hills, CA

¹ Formerly known as Ironclad Performance Wear Corporation, a California corporation.

² Formerly known as Ironclad Performance Wear Corporation, a Nevada corporation.

1 ICPW Liquidation Corporation, a California corporation, formerly known as Ironclad
2 Performance Wear Corporation, a California corporation (“ICPW California”), and ICPW
3 Liquidation Corporation, a Nevada corporation, formerly known as Ironclad Performance Wear
4 Corporation, a Nevada corporation (“ICPW Nevada” and collectively with ICPW California, the
5 “Debtors”), and the Official Committee of Equity Security Holders (the “OCEH”) hereby file this
6
7 First Supplement to the “Motion In Support Of Confirmation Of Debtors’ And Official
8 Committee Of Equity Security Holders’ Joint Plan Of Liquidation Dated January 12, 2018;
9 Memorandum Of Points And Authorities” (the “Plan Confirmation Motion”) filed with the Court
10 on January 22, 2018 as Docket Number 408.

11 In the Plan Confirmation Motion, the Debtors and the OCEH (collectively, the “Plan
12 Proponents”) requested the Court to confirm the “Debtors’ and Official Committee of Equity
13 Security Holders’ Joint Plan of Liquidation Dated January 12, 2018” (the “January 12, 2018
14 Plan”), which the Debtors and the OCEH filed with the Court on January 12, 2018 as Docket
15 Number 383.³
16

17 In the Plan Confirmation Motion, the Plan Proponents indicated that while the Plan
18 Proponents were not at that time (*i.e.*, on January 22, 2018) requesting the Court to approve any
19 modifications to the January 12, 2018 Plan, the Plan Proponents reserved all rights in this regard.
20 Prior to filing the January 12, 2018 Plan, the Plan Proponents had already engaged in substantive
21 discussions with the Securities Exchange Commission (the “SEC”) regarding various provisions
22 to the January 12, 2018 Plan that the SEC was requiring in order to avoid the SEC objecting to the
23 January 12, 2018 Plan. The Plan Proponents thought that they had addressed all of the SEC’s
24 issues in the January 12, 2018 Plan. However, the SEC requested the Plan Proponents to make
25
26

27 ³ All defined terms used in this First Supplement to Motion which are not defined in this First Supplement
28 but which are defined in the Motion and/or the Plan shall have the same definitions as provided to such
terms in the Motion and/or the Plan.

1 certain additional changes to the January 12, 2018 Plan, which the Plan Proponents have agreed to
2 make. Separate from, but substantially related to, the changes to the January 12, 2018 Plan
3 requested by the SEC, the United States Trustee (the “UST”) requested the Plan Proponents to
4 make certain additional changes to the January 12, 2018 Plan. The Plan Proponents have also
5 agreed to make the changes requested by the UST.
6

7 On February 9, 2018, the Plan Proponents filed the “Debtors’ and Official Committee of
8 Equity Security Holders’ Joint Plan of Liquidation Dated February 9, 2018” (the “February 9,
9 2018 Plan”) with the Court as Docket Number 438.⁴ A redlined version of the February 9, 2018
10 Plan which compares the changes made to the January 12, 2018 Plan is attached hereto as Exhibit
11 “1”. The February 9, 2018 Plan addresses the issues raised by the SEC and the UST, which both
12 the SEC and the UST have confirmed to the Plan Proponents.
13

14 The deadline for objections to be filed to the January 12, 2018 Plan was February 5, 2018.
15 Two objections were filed to the January 12, 2018 Plan. One such objection was filed by the
16 Debtors’ pre-petition secured creditor, Radians Wareham Holdings, Inc. (“Radians”). As result of
17 the fact that Radians was paid in full in connection with the Sale Closing, there is no remaining
18 secured debt in the Cases. However, Radians contends that if it prevails in the Radians Claim
19 Objection and Lawsuit filed by the OCEH, it will be entitled to payment of its legal fees and costs
20 incurred in connection with that litigation. The Plan Proponents have classified this contingent
21 and disputed claim of Radians as the class 3 claim under the February 9, 2018 Plan. As set forth
22 in the February 9, 2018 Plan and in the reply that will be filed to the objection raised by Radians,
23 in addition to the Residual Estate Funds, the Escrow Agent will retain the total sum of
24 \$600,000.00 (the “Class 3 Reserve Fund”) in a segregated trust account which will be used to pay
25
26

27 ⁴ All defined terms used in this First Supplement which are not defined in this First Supplement but which
28 are defined in the Motion and/or the February 9, 2018 Plan shall have the same definitions as provided to
such terms in the Motion and/or the February 9, 2018 Plan.

1 any class 3 claim which is allowed by order of the Court. The Plan Proponents submit that these
2 modifications adequately address the issues raised by Radians.⁵

3 The other objection was filed by disputed creditors Cordes and Aisenberg. In response to
4 that objection, the Plan Proponents have classified the disputed Cordes and Aisenberg Priority
5 Claims as part of class 4 under the Plan. In addition to the Residual Estate Funds and the Class 3
6 Reserve Fund, the Escrow Agent will retain in a segregated trust account the total sum of
7 \$300,000.00 (the “Class 4 Reserve Fund”) which will be used to pay the Cordes and Aisenberg
8 Priority Claims to the extent allowed by the Court, plus any indemnification claims of Cordes and
9 Aisenberg to the extent they prevail in the adversary proceeding against them and not covered by
10 the Debtors’ D&O insurance policy (defined in the February 9, 2018 Plan as the “Cordes and
11 Aisenberg Allowed Claims”). The Plan Proponents submit that these modifications adequately
12 address the issues raised by Cordes and Aisenberg.
13

14
15 Section 1127 of the Bankruptcy Code sets forth certain requirements that a plan proponent
16 must satisfy in order to modify a plan. Section 1127(b) of the Bankruptcy Code authorizes a plan
17 proponent to modify the plan at any time before confirmation of the plan provided the plan as
18 modified satisfies the requirements of §§ 1122 and 1123 of the Bankruptcy Code. A modification
19 to a plan does not mandate “the preparation of a new disclosure statement and resolicitation of the
20 plan.” In re American Solar King Corp. (“American Solar”), 90 B.R. 808, 823 (Bankr. W.D. Tex.
21 1988). Additional disclosure to creditors is required “only when and to the extent that the debtor
22 intends to solicit votes from previously dissenting creditors or when the modification materially
23 and adversely impacts parties who previously voted for the plan.”
24

25
26
27 ⁵ It should be noted that the Plan Proponents attempted to negotiate a mutually acceptable amount
28 to be included in the Class 3 Reserve Fund, but Radians made clear that it is not willing to agree
to any such resolution that would permit the February 9, 2018 Plan to be confirmed with an initial
distribution to be made to Shareholders.

1 The Plan Proponents submit that their proposed plan modifications are designed to address
2 all objections and requests made by the SEC, the UST, Radians and Cordes and Aisenberg and
3 continue to leave all creditors unimpaired and should be approved by the Court.

4 **CONCLUSION**

5 Based upon all of the foregoing, the Plan Proponents respectfully request the Court to
6 confirm the February 9, 2018 Plan at the Plan Confirmation Hearing scheduled to be held on
7 February 12, 2018.

8 Dated: February 9, 2018

9 Presented By:

10 LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.

11 By: /s/ Ron Bender

12 RON BENDER

13 MONICA Y. KIM

14 KRIKOR J. MESHEFEJIAN

15 Attorneys for Chapter 11 Debtors and Plan Proponents

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17 Performance Wear Corporation, a California corporation, and ICPW Liquidation Corporation, a
18 Nevada corporation, formerly known as Ironclad Performance Wear Corporation, a Nevada
19 corporation

20 DENTONS US LLP

21 By: 

22 SAMUEL R. MAIZEL

23 TANIA M. MOYRON

24 Attorneys for Official Committee of Equity Security Holders

EXHIBIT “1”

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23 ☐ Affects ICPW Liquidation Corporation, a
24 California corporation only
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**DEBTORS' AND OFFICIAL COMMITTEE
OF EQUITY SECURITY HOLDERS'
JOINT PLAN OF LIQUIDATION DATED
~~FEBRUARY~~ JANUARY 9~~12~~, 2018**

Plan Confirmation Hearing:

Date: February 12, 2018
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I. INTRODUCTION

ICPW Liquidation Corporation, a California corporation, formerly known as Ironclad Performance Wear Corporation, a California corporation ("ICPW California"), and ICPW Liquidation Corporation, a Nevada corporation, formerly known as Ironclad Performance Wear Corporation, a Nevada corporation ("ICPW Nevada") and collectively with ICPW California, the "Debtors") are the Debtors in pending chapter 11 bankruptcy cases. The Debtors filed voluntary petitions under chapter 11 of 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code") on September 8, 2017 (the "Petition Date").

Chapter 11 allows the Debtors, and, under some circumstances, creditors and other parties in interest, to propose a plan of liquidation. This document is the Joint Plan of Liquidation Dated ~~February 9~~ January 9, 2018 ("Plan") that is being jointly proposed by the Debtors and the Official Committee of Equity Security Holders (the "OCEH"). The Debtors and the OCEH are collectively referred to herein as the "Plan Proponents".

The effective date of this Plan (the "Effective Date") will be the first business day which is at least fifteen days following the date of entry of the Court order confirming this Plan (the "Plan Confirmation Order") and the satisfaction or waiver by the Debtors and the OCEH of all of the following conditions to the effectiveness of this Plan: (a) there shall not be any stay in effect with respect to the Plan Confirmation Order; (b) the Plan Confirmation Order shall not be subject to any appeal or rehearing; and (c) this Plan and all documents, instruments and agreements to be executed in connection with this Plan shall have been executed and delivered by all parties to such documents, instruments and agreements. Following the Effective Date, the Debtors will be referred to herein as the "Liquidating Debtor." If the Court confirms this Plan at the currently scheduled hearing of February 12, 2018 (the "Plan Confirmation Hearing"), the Plan Proponents estimate that the Effective Date will occur on or around February 28, 2018.

1 The Plan Proponents believe that this Plan represents the optimal outcome for these
2 chapter 11 bankruptcy cases (the "Cases"). The Plan Proponents believe that the confirmation of
3 this Plan provides the best vehicle for maximizing the distribution to the Shareholders (defined
4 below); getting a significant distribution made to the Shareholders on the earliest date possible
5 under the circumstances; and getting the Debtors' remaining creditors (holding not yet allowed
6 claims) paid in full with post-petition interest in the fastest and most efficient manner possible.
7 Any pre-petition claims that become allowed prior to Plan confirmation (the "Allowed Claims")
8 in these bankruptcy estates (the "Estates") that are not paid prior to Plan confirmation will be paid
9 in full on the Effective Date, together with post-petition interest. Any claims that become
10 Allowed Claims after the Effective Date will be paid in full together with post-petition interest.
11 Pursuant to § 1124(1) of the Bankruptcy Code, all classes of claims therefore are deemed not to
12 be impaired under this Plan and are not required to vote on this Plan. As holders of unimpaired
13 claims are conclusively presumed to have accepted this Plan, solicitation of acceptances to this
14 Plan from such claim holders is not required, pursuant to § 1126(f) of the Bankruptcy Code.

17 After appropriate reserves have been made for all allowed administrative expenses to be
18 paid in full, along with any remaining disputed claims and expected post-confirmation litigation
19 and other expenses (as further explained below), the balance of the funds in the Estates will be
20 distributed to the record shareholders of ICPW Nevada (the "Shareholders") in the manner
21 described below. The Plan Proponents currently estimate the initial distribution to Shareholders as
22 of the Record Date will be \$9,659,669.00 or approximately 11.28 cents per share.

24 A liquidating trust (the "Trust") is being established under this Plan. On the Effective
25 Date, the Debtors and the trustee of the Trust (the "Trustee") will enter into a grantor trust
26 agreement (the "Trust Agreement") for the benefit of the Shareholders. The Trustee will, among
27 other things, investigate and, if appropriate, pursue all claims and causes of action that belong to
28

1 the Estates and are assigned to the Trust for the benefit of the Shareholders. The Plan Proponents
2 believe that Shareholders are not impaired under this Plan. Therefore, Shareholders are not
3 required to vote on this Plan because they are conclusively presumed to have accepted this Plan,
4 and solicitation of acceptances to this Plan from the Shareholders is not required, pursuant to §
5 1126(f) of the Bankruptcy Code. Further information about the Trust, the Trustee and the
6 projected distribution to Shareholders is provided below.
7

8 **A. Disclaimer.**

9 THE INFORMATION CONTAINED IN THIS PLAN IS INCLUDED HEREIN FOR
10 PURPOSES OF DESCRIBING TREATMENT UNDER THIS PLAN. THE INFORMATION
11 CONTAINED HEREIN MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN
12 TO DESCRIBE TREATMENT UNDER AND TERMS OF THIS PLAN. NO PERSON MAY
13 GIVE ANY INFORMATION OR MAKE ANY REPRESENTATIONS REGARDING THIS
14 PLAN, OTHER THAN THE INFORMATION AND REPRESENTATIONS CONTAINED IN
15 THIS PLAN.
16

17 ALL CREDITORS, SHAREHOLDERS AND PARTIES IN INTEREST ARE ADVISED
18 AND ENCOURAGED TO READ THIS PLAN IN ITS ENTIRETY. PLAN SUMMARIES AND
19 STATEMENTS MADE IN THIS PLAN ARE QUALIFIED IN THEIR ENTIRETY BY
20 REFERENCE TO THIS PLAN AND THE EXHIBITS ANNEXED TO THIS PLAN. THE
21 STATEMENTS CONTAINED IN THIS PLAN ARE MADE ONLY AS OF THE DATE
22 HEREOF AND THERE CAN BE NO ASSURANCE THAT THE STATEMENTS
23 CONTAINED HEREIN SHALL BE CORRECT AT ANY TIME AFTER THE DATE HEREOF.
24 ANY ESTIMATES OF CLAIMS AND INTERESTS SET FORTH IN THIS PLAN MAY VARY
25 FROM THE AMOUNTS OF CLAIMS AND INTERESTS ULTIMATELY ALLOWED BY
26 THE COURT.
27
28

1 THE FINANCIAL DATA RELIED UPON IN FORMULATING THIS PLAN IS BASED
2 ON THE DEBTORS' BOOKS AND RECORDS WHICH, UNLESS OTHERWISE
3 INDICATED, ARE UNAUDITED. THE INFORMATION AND STATEMENTS
4 CONTAINED IN THIS PLAN, INCLUDING, WITHOUT LIMITATION,
5 INFORMATION ABOUT THE DEBTORS, THEIR FORMER BUSINESS AND THEIR
6 BANKRUPTCY ESTATES AND ASSETS, HAVE BEEN PROVIDED SOLELY BY THE
7 DEBTORS, AND SUCH INFORMATION HAS NOT BEEN INDEPENDENTLY
8 VERIFIED OR AUDITED BY ANY OTHER PARTY.
9

10 **B. Purpose of this Plan .**

11 This Plan summarizes what is in this Plan and tells you certain information relating to this
12 Plan and the process the Court follows in determining whether or not to confirm this Plan.
13

14 **READ THIS PLAN CAREFULLY IF YOU WANT TO KNOW ABOUT:**

15 **(1) WHAT THE TREATMENT OF YOUR CLAIM IS (*i.e.*, what your claim will**
16 **receive if this Plan is confirmed) AND HOW THIS TREATMENT COMPARES TO**
17 **WHAT YOUR CLAIM WOULD RECEIVE IN A CHAPTER 7 LIQUIDATION OF THE**
18 **DEBTORS;**

19 **(2) THE HISTORY OF THE DEBTORS AND SIGNIFICANT EVENTS**
20 **DURING THEIR BANKRUPTCY CASES;**

21 **(3) THINGS THE COURT WILL LOOK AT TO DECIDE WHETHER OR**
22 **NOT TO CONFIRM THIS PLAN;**

23 **(4) THE EFFECT OF PLAN CONFIRMATION; AND**

24 **(5) WHETHER THIS PLAN IS FEASIBLE.**

25 This Plan cannot tell you everything about your rights. You should consider consulting
26 your own lawyer to obtain more specific advice on how this Plan will affect you and what is the
27
28

1 best course of action for you.

2 Be sure to read this Plan and the Trust (for Shareholders) in their entirety. If there are any
3 inconsistencies between this Plan and the Trust, the Trust provisions will govern.

4 **C. Deadlines for Objecting to this Plan; Date of Plan Confirmation Hearing.**

5 THE COURT HAS NOT YET CONFIRMED THIS PLAN. IN OTHER WORDS, THE
6 TERMS OF THIS PLAN ARE NOT YET BINDING ON ANYONE. HOWEVER, IF THE
7 COURT LATER CONFIRMS THIS PLAN, THEN THIS PLAN WILL BE BINDING ON ALL
8 CREDITORS AND SHAREHOLDERS IN THE CASES.

10 **1. Time and Place of the Plan Confirmation Hearing.**

11 The Plan Confirmation Hearing will take place on February 12, 2018, at 1:30 p.m., before
12 the Honorable Martin R. Barash, United States Bankruptcy Judge for the Central District of
13 California, San Fernando Valley Division, in Courtroom 303, located at 21041 Burbank Blvd.,
14 Woodland Hills, California.

16 **2. Deadline for Objecting to the Confirmation of this Plan.**

17 Objections to the confirmation of this Plan must, by February 5, 2018, be filed with the
18 Court and served by same day service upon counsel to the Debtors – Ron Bender, Esq. and Krikor
19 Meshefejian, Esq., Levene, Neale, Bender, Yoo & Brill L.L.P., 10250 Constellation Blvd., Suite
20 1700, Los Angeles, California 90067, fax: (310) 229-1244, email: rb@lnbyb.com;
21 kjm@lnbyb.com, and upon counsel to the OCEH – Sam R. Maizel, Esq. and Tania M. Moyron,
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23 5704, fax (213) 623-9924, email: samuel.maizel@dentons.com; tania.moyron@dentons.com.

25 **D. Identity of Persons to Contact for More Information Regarding this Plan.**

26 Any interested party desiring further information about this Plan should contact either
27 counsel to the Debtors – Ron Bender, Esq. or Krikor Meshefejian, Esq., Levene, Neale, Bender,
28

Yoo & Brill L.L.P., 10250 Constellation Blvd., Suite 1700, Los Angeles, California 90067, fax: (310) 229-1244, email: rb@lnbyb.com; kjm@lnbyb.com, or counsel to the OCEH – Samuel R. Maizel, Esq. or Tania M. Moyron, Esq., Dentons US LLP, 601 South Figueroa Street, Suite 2500, Los Angeles, California 90017-5704, fax (213) 623-9924, email: samuel.maizel@dentons.com; tania.moyron@dentons.com.

II. BACKGROUND

A. Description and History of the Debtors' Business and the Debtors' Sale Process which Led to the Filing of the Debtors' Chapter 11 Cases.

On the Petition Date of September 8, 2017, the Debtors each filed a Voluntary Petition under chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtors have operated their business and managed their affairs as debtors in possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code. With the Court's approval, the Debtors' two chapter 11 Cases are being jointly administered. Other than owning all of the shares in the California entity, the Nevada entity had no business. All operations of the Debtors effectively functioned through the California entity.

Until the recently consummated sale of substantially all of their assets (discussed in detail below), the Debtors were a leading, technology-focused developer and manufacturer of high-performance task-specific gloves and apparel for the "industrial athlete" in a variety of end markets, including construction, manufacturing, oil and gas ("O&G"), automotive, the sporting goods, military, police, fire, and first-responder. The Debtors' business was headquartered in Farmers Branch, Texas. ICPW Nevada is publicly-traded with its common stock quoted on the OTC Markets under the symbol "ICPW". As of December 29, 2017, ICPW Nevada had 85,646,354 shares of common stock, par value \$0.001 per share, issued and outstanding. As of August 30, 2017, the Debtors had approximately 41 full time employees, with 9 of these

1 employees working overseas. The Debtors effectively terminated all of their employees upon the
2 closing of the Debtors' recent sale of its business and nearly all of the Debtors' former employees
3 were hired by the buyer. From the Petition Date through the closing of the sale of the Debtors'
4 business, there were five members of the Debtors' board of directors (the "Board") (consisting of
5 Ben Padnos, David Jacobs, Emmett Murphy, Robert Steckler and Mike DiGregorio). Following
6 the closing of the sale of the Debtors' business, three of those members voluntarily resigned from
7 the Board leaving only Ben Padnos and Mike DiGregorio as currently serving Board members.
8 L. Geoffrey Greulich (the Debtors' Chief Executive Officer) and Matthew Pliskin (the Debtors'
9 Chief Financial Officer) have served as the Debtors' senior management during the entire
10 duration of the Cases. *See* discussion of management changes at 43 and 54, *infra*.

11
12 The Ironclad business was founded in 1998 by Ed Jaeger. Mr. Jaeger was inspired to
13 build gloves that offered protection and performance without sacrificing one for the other. From
14 the beginning, the Debtors built gloves using materials that offered excellent fit to make them an
15 extension of the hand and to make jobs easier for the "industrial athlete". By 2006, the Debtors
16 offered 35 different task-specific glove types for people wearing gloves as part of their daily jobs.

17
18 In 2008, the Debtors launched the KONG (King of Oil 'N' Gas) line to address the high
19 number of hand injuries in the O&G field. By 2010, the KONG line was comprised of 46
20 different gloves. Additionally, the Debtors expanded their presence in the retail and non-
21 professional markets with the launch of the EXO brand in June 2015. EXO offered lower cost
22 gloves for automotive, DIY, and outdoor sporting applications. The Debtors offered 30 different
23 EXO glove types.

24
25 The Debtors' task-specific technical glove products were specially designed for individual
26 user groups. The Debtors offered over 160 distinct types of gloves for a variety of markets,
27 including industrial, construction, DIY, carpentry, machining, package handling, plumbing,
28

1 welding, roofing, O&G, mechanics, hunting, and gardening. Products came in a multitude of
2 colors and catered to the specific demands and requirements of the users based on ease of motion,
3 grip, water and chemical resistance, visibility, and protection from abrasions, cuts, flames,
4 impacts, temperature, and vibration. Since inception, the Debtors employed an internal research
5 and development (“R&D”) department responsible for identifying and creating new products and
6 applications, and improving and enhancing existing products. The Debtors continually evaluated
7 new base materials for gloves, and grip was another key area of focus for R&D. The Debtors
8 often partnered with industry-leading organizations to develop new products. The Debtors had 13
9 U.S. patents issued and 11 foreign patents, as well as five pending U.S. patent applications and
10 several pending foreign patent applications. The Debtors also used trademarks to strengthen and
11 protect their recognizable brand names. The Debtors owned 52 registered U.S. trademarks, 39
12 registered international trademarks, and 13 and 43 trademarks pending in the U.S. and
13 internationally, respectively.
14

15
16 The Debtors sold their product through approximately 10,000 outlets for professional
17 tradesmen as well as “Big Box”, hardware, auto parts, and sporting goods retailers. The sales
18 force was organized by 3 business segments: Industrial, Retail, and International. Glove products
19 were manufactured by multiple suppliers operating in China, Bangladesh, Cambodia, Vietnam
20 and Indonesia.
21

22 **B. Events Leading To The Filing Of The Debtors’ Chapter 11 Bankruptcies And The**
23 **Debtors’ Chapter 11 Goals.**

24 Despite the development and success of the Debtors’ products over the years, the Debtors’
25 revenue and cash flow from operations became insufficient beginning in mid-2013 to support
26 their business operations as well as their continued growth. There were many reasons for this
27 including heavy competition, loss of a major international distributor, incomplete and/or
28

1 ineffective expansion and distribution of all of their product lines and development of new
2 customers, and higher than anticipated administrative production, manufacturing and warehousing
3 costs. In addition, it was discovered in early-2017 that under then management, the Debtors had
4 failed to provide materially complete and accurate financial statements as required under their
5 loan documents to their primary secured lender for the fiscal years ended December 31, 2015 and
6 2016, and for the fiscal quarters ended March 31, June 30, September 30, 2016 and March 31,
7 2017. These same financial irregularities were also publicly filed and disclosed through the
8 Company's SEC and other public filings. The Plan Proponents understand that an investigation
9 of the foregoing may now be underway by federal authorities. As a result of this discovery, the
10 Debtors' then chief executive officer and other officers voluntarily resigned, and L. Geoffrey
11 Greulich was employed as the Debtors' new chief executive officer effective July 6, 2017. Prior
12 to assuming this position, Mr. Greulich had no prior connection or relationship with the Debtors
13 as an insider, equity holder or otherwise. As a Senior Advisor, Operations at Corridor Capital,
14 LLC, where he leads operations through portfolio engagement as well as conducting due
15 diligence, Mr. Greulich was highly qualified to serve as the Debtors' new chief executive officer,
16 and, as indicated below, did and is continuing to do an extraordinary job for the Debtors during
17 their Cases.

18
19
20 The Debtors filed the Cases to consummate a sale of substantially all of their assets
21 (excluding cash, causes of action and other assets) for the most money possible. Just prior to their
22 chapter 11 bankruptcy filings, the Debtors entered into an asset purchase agreement (the "Radians
23 APA") with the Debtors' then pre-petition secured creditor, Radians Wareham Holdings, Inc.
24 ("Radians"), for a cash purchase price of \$20 million or \$15 million, subject to an overbid
25 process. Radians' agreement to pay a cash purchase price of either \$20 million or \$15 million
26 was dependent upon whether the Debtors would be able to obtain the consent of a key customer to
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1 extending the term of their contract with the Debtors. The Debtors were able to obtain that
2 consent prior to the auction, which resulted in the Radians' purchase price being \$20 million.
3 Radians had acquired the Debtors' secured bank debt several months before the Petition Date.
4 The Plan Proponents believe that Radians did this with the goal of acquiring the Debtors' business
5 – either consensually or through a hostile manner.
6

7 The Debtors' business was actively marketed for sale for a number of months prior to the
8 Debtors' bankruptcy filings by the Debtors' financial advisor/investment banker – Craig Hallum
9 Capital Group LLC ("C-H"). Prospective buyers were provided with the opportunity to purchase
10 assets or equity. While a number of prospective buyers expressed pre-petition interest in possibly
11 purchasing the Debtors' assets or stock, the Debtors ran out of time to continue with their pre-
12 bankruptcy marketing process because (i) the Debtors were out of funds, (ii) the Debtors could
13 not continue to operate without both access to their own cash receipts as well as receipt of
14 additional financing, and (iii) Radians (which as described above was also the Debtors' secured
15 creditor having purchased the Debtors' pre-bankruptcy secured bank debt) had exercised its
16 secured creditor rights and was sweeping all of the Debtors' cash on a daily basis and was no
17 longer willing to continue to forbear or advance additional needed financing to the Debtors absent
18 a global resolution with the Debtors which was accomplished with the Radians APA and the DIP
19 financing agreement the Debtors entered into with Radians (discussed more below).
20
21

22 The purchase offer provided to the Debtors by Radians was determined by the Board to be
23 the best offer the Debtors had received by the Petition Date, and Radians was ready to proceed
24 with its purchase and lend the Debtors sufficient funds to enable the Debtors to operate their
25 business through a bankruptcy auction to take place in late October, 2017, with a sale closing to
26 occur shortly thereafter. Consistent with the Bankruptcy Code, Radians permitted the Debtors to
27 proceed with a robust post-bankruptcy marketing and overbid process (and corresponding auction
28

1 – defined below as the “Auction”) to insure that the highest and best price was paid for the
2 Debtors’ assets. Given the breadth of the Debtors’ pre-bankruptcy marketing process and the fact
3 that C-H, the Debtors’ pre-bankruptcy investment banker/financial advisor (who was already very
4 familiar with the various likely prospective overbidders) would be serving as the Debtors’ post-
5 bankruptcy investment banker/financial advisor and leading the overbid sale process, and the fact
6 that the likely overbidders were already deep into the due diligence process, the Debtors were
7 confident that providing prospective overbidders with approximately six weeks to decide whether
8 to participate in the Auction was a sufficient amount of time for the Debtors to achieve the highest
9 and best price for their assets. Also, and very importantly, if not for the recent closing of the
10 Debtors’ sale of their assets, the Debtors’ believe that their liquidity needs would have expanded
11 significantly during the last two months of the year, consistent with the Company’s normal
12 business cycle. If the Debtors had continued to operate their business through the end of the year
13 or significantly beyond October 31, 2017, the Debtors’ borrowing needs likely would have
14 increased significantly. Even if the Debtors were able to obtain the necessary post-petition
15 financing (which was not at all clear), any such additional borrowing (and the costs of such
16 additional borrowing) would have reduced the ultimate recovery for the Debtors’ Shareholders on
17 a dollar-for-dollar basis. It was for these reasons that it was very important that the Debtors were
18 able to implement their proposed sale timeline.

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20
21
22 **C. The Asset Sale Process.**

23 At a continued hearing held on September 25, 2017, the Court granted the Debtors’ bid
24 procedures motion by order entered on September 28, 2017 as Docket Number 71 (the “Bidding
25 Procedures Order”). The Bidding Procedures Order was approved by the Debtors, Radians, the
26 Official Committee of Unsecured Creditors (the “OCUC”) and the OCEH. Both the OCUC and
27 the OCEH hired counsel and a financial advisor (although both the Debtors and the OCEH
28

1 opposed the employment of a financial advisor to the OCUC since creditors were being paid in
2 full). The Bidding Procedures Order explained to prospective overbidders how a prospective
3 overbidder became qualified to participate in the Auction and how the Auction would proceed in
4 the event that there was one or more qualified overbidders. In addition, C-H had established an
5 extensive data room for prospective overbidders to obtain diligence information, and the Debtors'
6 senior management had made themselves available to meet with prospective overbidders and
7 provide management presentations. To assist in the overbid process, the Debtors' counsel
8 prepared an asset purchase agreement template for prospective overbidders to use if they wanted,
9 and delivered that template to C-H to distribute to prospective overbidders.
10

11 **D. The Radians APA.**

12 The Radians APA was the result of extensive pre-bankruptcy negotiations and
13 documentation between the Debtors and Radians. Under the Radians APA, Radians had agreed
14 to purchase the vast majority of the Debtors' assets for the cash purchase price of \$20 million or
15 \$15 million, depending upon whether the Debtors would be able to obtain the consent of a key
16 customer to extending the term of their contract with the Debtors. As indicated above, the
17 Debtors were able to obtain that consent prior to the auction, which resulted in the Radians'
18 purchase price being \$20 million. Radians provided the Debtors with a \$1 million deposit which
19 was held in a trust account by the Debtors' bankruptcy counsel, Levene, Neale, Bender, Yoo &
20 Brill L.L.P. ("LNBYB"). At the time of the Debtors' bankruptcy filings, Radians' outstanding
21 secured debt was in the amount of approximately \$3.5 million. The Debtors borrowed a total of
22 \$1.1 million post-petition from Radians in accordance with the terms of the Final DIP Order
23 (defined below). Radians agreed to make a severance payment to each of the Debtors' employees
24 who were not offered employment by Radians, other than the Debtors' officers and any employee
25 subject to an employee retention agreement, at comparable terms to their then employment with
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1 the Debtors, with each such severance payment to be consistent with the most generous current
2 severance policy of Radians for similarly situated employees. Radians was provided with the
3 right to designate which of the Debtors' executory contracts and unexpired leases that it wished to
4 assume with the payment of all related cure amounts to be the responsibility of Radians.

5
6 **E. The Final DIP and Cash Collateral Order.**

7 On October 6, 2017, as docket number 87, the Court entered the *Final Order: (I)*
8 *Authorizing The Debtors To (A) Obtain Postpetition Financing Pursuant To 11 U.S.C. §§ 105,*
9 *361, 362 And 364, And (B) Utilize Cash Collateral Pursuant To 11 U.S.C. §§ 361, 362, 363 And*
10 *364; (II) Granting Adequate Protection Pursuant To 11 U.S.C. §§ 361, 362, 363 And 364; And*
11 *(III) Granting Related Relief (the "Final DIP Order").* The Debtors had obtained interim use of
12 cash collateral and DIP financing on an emergency basis pending entry of the Final DIP Order
13 pursuant to an order entered on September 13, 2017 as docket number 31, and then further interim
14 use pursuant to a second order entered on September 27, 2017 as docket number 70. The Final
15 DIP Order as well as the preceding interim cash collateral/dip financing orders were critical to the
16 Debtors' ability to continue to operate their business post-bankruptcy and to have the necessary
17 funding to do so. An important component to the Final DIP Order negotiated between the OCUC
18 and the OCEH, on the one hand, and Radians, on the other hand, is the "Challenge Rights of
19 Official Committee of Unsecured Creditors and the Official Committee of Equity Security
20 Holders" (the "Challenge Rights"). Per the terms of the Final DIP Order, the parties agreed that
21 on or before the date that is sixty days from the date of entry of the Final DIP Order (*i.e.*,
22 December 5, 2017 – the "Lookback Period"), the OCUC and the OCEH have standing
23 individually and on behalf of the Estates to object to, challenge, or seek to avoid the amount,
24 validity, or enforceability of Radians' pre-bankruptcy secured debt (or any portion thereof) or any
25 of the liens and security interests created under the Radians' pre-bankruptcy secured debt and to
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bring any other claim that they have against Radians, individually or on behalf of the Estates (separately and collectively, a "Challenge"). If no such action, objection or other Challenge is commenced by either the OCUC or the OCEH within the Lookback Period, then the Radians' pre-bankruptcy secured debt will be deemed and adjudicated finally and indefeasibly as valid and enforceable, the liens and security interests created under the Radians' pre-bankruptcy secured debt will be deemed and adjudicated finally and indefeasibly as valid, enforceable and perfected liens and security interests in that collateral, and any affirmative claim(s) or cause(s) of action of any kind against Radians with respect to the Radians' pre-bankruptcy secured debt, or otherwise, and the liens and security interests securing the Radians' pre-bankruptcy secured debt, or any payment received by Radians will be forever barred. As provided in the Final DIP Order, the Debtors have waived and released, and shall be forever barred from asserting, any right to object to, challenge or seek to avoid, the amount, validity, or enforceability of the Radians' pre-bankruptcy secured debt or the liens and security interests in the collateral securing the Radians' pre-bankruptcy secured debt. Except as otherwise may have been determined by the Court in the proceedings referenced above, and subject to further order of the Court, in the event any payment made to, or other amount or value received by Radians from or for the account of any of the Debtors is avoided, rescinded, set aside or must otherwise be returned or repaid by Radians, whether in the Cases or any other proceedings, the indebtedness repaid shall be allowed as a claim in accordance with existing law. Any of Radians' claims, liens, rights, and remedies under the Radians loan documents which survive such action shall be reinstated and fully preserved. As explained below, in accordance with the Sale Order, the full amount of the Radians' secured debt plus the \$500,000 breakup fee owing to Radians under the Radians APA has already been paid in full. Since it is now clear that all Allowed Claims will be paid in full, it is only the Shareholders that would be affected by any recovery obtained from Radians. As a result, the OCEH has not waived its

1 Challenge Rights and is handling the investigation. *See* discussion of Challenge at p.26, *infra*.

2 **F. The Auction and the Sale Closing.**

3 Pursuant to the Bidding Procedures Order, the Auction was scheduled to be held before
4 the Court on October 30, 2017, at 10:00 a.m. Approximately 20 prospective overbidders signed
5 NDA's and accessed the data room. Many of them spent extensive time in the data room and
6 with C-H and the Debtors' management team. The Debtors' management team provided multiple
7 management presentations to prospective overbidders. Prior to the Auction, the Debtors filed a
8 declaration of Steve Rickman of C-H, who is the Managing Director of Investment Banking
9 Mergers and Acquisitions at C-H and who served as the lead professional at C-H providing
10 services on this engagement, in which Mr. Rickman declared that he believed that serious
11 prospective overbidders were well informed as to the overbid opportunity and the impending
12 Auction process, and that he was not aware of any serious prospective overbidder who did not
13 comply with the requirements to be eligible to participate in the Auction because they did not
14 have access to sufficient information or required additional time.
15

16
17 In order to become qualified to participate in the Auction, prospective overbidders were
18 required to do each of the following three things: (1) deliver a \$1 million deposit to a segregated
19 trust account maintained by LNBYB which would be non-refundable if the prospective
20 overbidder was the winning bidder at the Auction; (2) deliver a redlined version of the Radians
21 APA showing the prospective overbidder's proposed changes to the Radians APA; and (3) be
22 determined to be financially qualified by C-H to fund the transaction without any further
23 financing or due diligence contingency. Two prospective overbidders satisfied all three
24 requirements, consisting of Brighton-Best International, Inc. ("BBI") and Protective Industrial
25 Products, Inc. ("PIP"). This sale process was an extremely fluid process as there were a number
26 of constantly moving parts.
27
28

1 As a result, between Radians (as the stalking horse bidder) and BBI and PIP (as
2 prospective overbidders), there were three qualified bidders at the Auction. The Auction was an
3 extraordinary success. Through great efforts by Mr. Greulich and LNBYB, the Debtors were able
4 to satisfy the condition referenced in the side letter filed under seal which required Radians to
5 commence the Auction with an opening bid of \$20 million instead of \$15 million. Thus, before
6 any overbid was even submitted, the sale price had already increased by \$5 million. After very
7 robust bidding by BBI and PIP (Radians never submitted any overbid beyond its initial \$20
8 million opening bid), BBI was determined to be the winning bidder at the Auction with a
9 purchase price of \$25,250,000, and PIP consented to be a backup bidder with a backup purchase
10 price of \$25,000,000. The final form of the sale order and the final form of the APA with BBI
11 were heavily negotiated and agreed to by the Debtors, BBI, the OCUC and the OCEH, and the
12 Court entered the final form of the sale order on November 3, 2017, as docket number 177 (the
13 "Sale Order"), after conducting two follow-up hearings on the Sale Order on November 1, 2017,
14 and then again on November 3, 2017.

15
16
17 The sale to BBI closed on November 14, 2017 (the "Sale Closing"). In connection with
18 the Sale Closing, after taking into account various deposits and pro rations, BBI wire transferred a
19 Sale Closing payment of \$25,328,919, which is in addition to the \$1,000,000 deposit that BBI had
20 provided to the Debtors in advance of the Auction (the "BBI Deposit") and is inclusive of the
21 \$820,000 "Supplemental Payment" which, pursuant to the Sale Order, is to be maintained by
22 LNBYB (the "Escrow Agent") at First Republic Bank in a segregated trust account separate from
23 the balance of the sale proceeds pending further order of the Court. In connection with the Sale
24 Closing, a payment in the amount of \$180,000 was made to Grainger to compensate Grainger for
25 what all of the parties agreed was the minimum amount owing to Grainger. The \$820,000
26 Supplemental Payment from BBI is to provide a source of funding of any further payment that
27
28

1 may be owing to Grainger as a result of the Debtors' rejection of their two supplier agreements
2 with the Grainger entities (Grainger Global Sourcing a division of Grainger International, Inc.
3 ("GGS") and W.W. Grainger, Inc. ("Grainger"). BBI had the opportunity to take an assignment
4 of the Debtors' supplier agreements with GGS and Grainger, but BBI decided that it did not want
5 to do so, and the Sale Order provides for the Debtors' supplier agreements with GGS and
6 Grainger to be rejected upon further order of the Court (with the Debtors and BBI to work
7 together in an effort to minimize any rejection damage claim in favor of GGS and Grainger). In
8 the event that GGS and Grainger end up with allowed rejection damage claims in excess of the
9 \$180,000 that was paid to the Grainger entities in connection with the Sale Closing but not more
10 than \$1 million, the excess will be paid to the Grainger entities out of the \$820,000 Supplemental
11 Payment with any remaining balance to be returned to BBI. In the event that GGS and Grainger
12 end up with allowed rejection damage claims in excess of \$1 million (which the Debtors do not
13 believe will be the case), the entire \$820,000 Supplemental Payment will be paid to the Grainger
14 entities, and the Debtors will be liable for any amount owing to the Grainger entities in excess of
15 \$1 million. The Debtors have filed a motion with the Court to reject the Debtors' supplier
16 agreements with GGS and Grainger. Following the entry of an order of the Court granting the
17 Debtors' rejection motion, GGS and Grainger will then have thirty days to file any rejection
18 damage claim they contend they have against the Debtors, with the Debtors, the OCEH and BBI
19 all having the standing to file any response to any rejection damage claim asserted by GGS and/or
20 Grainger.

21
22
23
24 After adding in the BBI Deposit and deducting the Supplemental Payment, a total of
25 \$25,511,469 of sale proceeds was deposited into the segregated trust account (the "Trust Account")
26 maintained by the Escrow Agent.
27
28

1 In accordance with the Sale Order, all of the following “Designated Cure Amounts” were paid
2 by the Escrow Agent out of the Trust Account concurrently with the Sale Closing:

3 Nantong Changbang Gloves Co. - \$1,228,307.56

4 Woneel Midas Leathers - \$785,358.50

5 Mercindo Global Manufaktur - \$444,674.64

6 Marusan – Mimasu Tshusho Co. Ltd. - \$382,811.28

7 Grainger - \$180,000.00

8 Advantage Media Services - \$178,522.75

9 PT JJ Gloves Indo - \$162,917.76

10 PT Sport Glove Indonesia - \$144,238.66

11 Windspeed Sports Shanghai Co., Ltd. - \$152,830.45³

12 Ka Hung Glove Industrial Co. Ltd. - \$38,934.90

13 Synetra - \$37,972.33

14 AML United Limited - \$28,330.56

15 1920 Hutton Court - \$13,257.09

16 PT Seok HWA Indonesia - \$13,174.86

17 Design Gallery (Pvt.) Ltd. - \$12,801.60

18 Desun Garments, Ltd. - \$7,691.75

19 Konica Minolta - \$1,152.31

20 Pitney Bowes - \$452.99

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28 ³ This figure was \$144,198.43 in the Sale Order but was increased to \$152,830.45 pursuant to an order of the
Court entered on November 13, 2017, as Docket Number 207.

1 Also in accordance with the Sale Order, the Escrow Agent paid out of the Trust Account to
2 Radians the full amount of Radians' outstanding debt plus a breakup fee of \$500,000 and an early
3 termination fee of \$120,000, which amounted to a total payment of \$5,343,988.19.

4 After taking into account all of the foregoing (and excluding the Supplemental Payment),
5 the final initial remaining balance in the Trust Account following the Sale Closing was
6 \$16,354,050.82. The professional fees and expenses that were allowed by the Court pursuant to
7 the order entered on December 13, 2017 as Docket Number 337 were paid out of the Trust
8 Account, reducing the balance in the Trust Account of \$14,776,072.73.

9
10 In accordance with an order of the Court entered on December 14, 2017, as Docket
11 Number 345 pursuant to which the Court granted the Debtors' motion for authority to pay the
12 Debtors' undisputed pre-petition claims pursuant to an established protocol, the Debtors and the
13 OCEH jointly filed a notice with the Court indicating their intent to pay all remaining undisputed
14 claims with post-petition interest through the date of payment, and their intent to pay post-petition
15 interest to all of the creditors who were paid the Designated Cure Amounts in connection with the
16 Sale Closing as itemized immediately above.⁴ All of these payments, which totaled
17 approximately \$318,995.20, were paid out of the Trust Account on or about December 22, 2017.
18 The Debtors and the OCEH also reached settlement agreements with a number of disputed claims
19 which have since been paid with the consent of the formerly disputed creditors in accordance with
20 the Court approved protocol. After payment of all of the foregoing creditors, the current balance
21 in the Trust Account as of January 12, 2018 is approximately \$13,829,001 (the "Remaining Estate
22 Funds"). The Remaining Estate Funds will continue to be maintained in the Trust Account by
23
24
25

26
27 ⁴ The Debtors also paid interest to and the undisputed portion of the claims of the seven claimants whose
28 claims the Debtors have objected to with the interest paid to that portion of the disputed claim that the
Debtors have not objected to so that the Debtors will have paid all post-petition interest through December
22, 2017 in the event the Debtors prevail on all seven claims objections.

1 LNBYB, as Escrow Agent, pending further order of the Court. All of the Remaining Estate Funds are
2 unencumbered.

3 **G. Significant Events Which Have Occurred During the Bankruptcy Cases.**

4 The following is a list of many of the significant events which have occurred during the
5 Cases beyond that set forth above:

6 **1. Formation of the Official Committee of Unsecured Creditors (the "OCUC").**

7 The United States Trustee (the "UST") formed the OCUC at the very outset of the Cases
8 to represent the interests of general unsecured creditors. The OCUC was composed of the
9 following three members: Resources Global Professionals, Winspeed Sports (Shanghai) Co., Ltd.
10 and PT Sports Glove Indonesia. As indicated above, both Windspeed Sports Shanghai Co., Ltd.
11 and PT Sport Glove Indonesia were paid in full (without post-petition interest) in connection with the
12 Sale Closing, leaving Resources Global Professionals as the sole remaining member of the OCUC.
13 The Debtors subsequently paid post-petition interest to both Windspeed Sports Shanghai Co., Ltd. and
14 PT Sport Glove Indonesia, and the Debtors paid the full claim of Resources Global Professionals with
15 post-petition interest. All three members of the OCUC have therefore been paid in full with post-
16 petition interest. The Debtors have therefore requested the UST to disband the OCUC. The OCUC
17 employed Brown Rudnick LLP as its counsel, and the OCUC employed Province, Inc. as its financial
18 advisor.
19

20 **2. Formation of the Official Committee of Equity Security Holders (the**
21 **"OCEH").**

22 Also at the very outset of the Cases, the UST formed the OCEH to represent the interests
23 of the equity holders of ICPW Nevada (i.e., the "Shareholders"). The OCEH is composed of the
24 following three members: Scott Jarus, Ron Chez and Patrick O'Brien. The OCEH employed
25 Dentons US LLP as its general and bankruptcy counsel, and the OCEH employed Michael D.
26
27
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Schwarzmann as its financial advisor. The OCEH subsequently employed Solomon & Cramer LLP as its special litigation counsel.

3. Operational Issues.

i. Use of Cash Collateral and Post-Petition Borrowing.

In order for the Debtors to continue to operate their business and manage the Estates through the Auction process and Sale Closing, the Debtors had to be able to use their cash and post-petition operating revenue, and the Debtors had to be able to borrow a sufficient amount of additional money to fund their projected post-petition cash flow shortfalls. As explained above, Radians was the Debtors' secured creditor at the time of the Debtors' bankruptcy filings. Concurrently with entering into the Radians APA with the Debtors' just prior to the Debtors' bankruptcy filings, Radians entered into a cash collateral/dip financing agreement with the Debtors pursuant to which Radians consented to the Debtors' use of cash collateral, and Radians agreed to lend the Debtors up to \$1.5 million of post-petition financing. The Debtors ultimately borrowed only \$1.1 million post-petition from Radians. The entire Radians secured debt was paid in full in connection with the Sale Closing.

ii. Emergency Motion to Jointly Administer the Debtors' chapter 11 Cases.

At the commencement of the Cases, the Debtors filed emergency motions for authority to jointly administer the Cases. On September 12, 2017, the Court granted the Debtors' emergency joint administration motions pursuant to docket number 7 in the Nevada case and docket number 25 in the California case.

iii. Emergency Motion to Pay the Debtors' Pre-Petition Priority Wages and Related Employee Expenses.

At the commencement of the Cases, the Debtors filed an emergency motion for authority

1 to pay the Debtors' pre-petition priority wages and related benefits in the ordinary course of
2 business to avoid the disruption to the Debtors' business from failing to do so. The Court granted
3 the Debtors' emergency wage motion pursuant to an ordered entered on September 13, 2017 as
4 docket number 29.

5
6 **iv. Emergency Motion to Provide Adequate Assurance of Payment to the**
7 **Debtor's Utilities.**

8 At the commencement of the Cases, the Debtors filed an emergency motion for an order
9 authorizing the Debtors to provide adequate assurance of future payment to certain utility
10 companies pursuant to § 366(c) of the Bankruptcy Code. The Court granted the Debtors'
11 emergency utilities motion pursuant to an ordered entered on September 13, 2017 as docket
12 number 30.

13
14 **v. Emergency Motion to Maintain Cash Management Systems.**

15 At the commencement of the Cases, the Debtors filed an emergency motion for authority
16 to maintain their cash management systems, which was imperative to avoid significant disruption
17 to the Debtors' business operations. The Court granted the Debtors' emergency cash
18 management systems motion pursuant to an ordered entered on September 14, 2017 as docket
19 number 36.

20
21 **vi. Pre-Petition Claims Bar Date & Other Bar Dates.**

22 The Court established, among other things, a claims bar date of October 20, 2017, as the
23 last day for creditors to file pre-petition claims against the Debtors, pursuant to an ordered entered
24 on September 14, 2017, as docket number 37 (the "Bar Date Order"). The Bar Date Order further
25 provides that for claims of "governmental units," as that term is defined in 11 U.S.C. § 101(27),
26 proofs of claim are timely filed: (a) before 180 days after the date of the order for relief in the
27 Cases, or (b) October 20, 2017, whichever is later.
28

1 vii. **Motion to Honor Pre-Petition and Post-Petition Employee Bonus**

2 **Incentive Agreements.**

3 Both prior to the commencement of the Cases and following the commencement of the
4 Cases, the Debtors negotiated various performance based bonus programs and targets with their
5 key employees because their performance with the business and cooperation with the sale process
6 were going to be crucial towards the successful consummation of the sale of the business to BBI
7 and effectuate a smooth transaction of the business to BBI. Pursuant to an order entered on
8 November 17, 2017, as docket number 224, the Court authorized the Debtors to pay a total of
9 \$457,500 of employee bonuses on account of pre-bankruptcy employee bonus agreements, and
10 the Court authorized the Debtors to pay a total of \$52,500 of employee bonuses on account of
11 post-bankruptcy employee bonus agreements for a total amount of employee bonuses of
12 \$510,000, all of which were paid in connection with the Sale Closing.
13

14 viii. **Debtors' Name Change Following the Sale Closing.**

15 As part of the Debtors' sale agreement with BBI, the Debtors were required to effectuate a
16 name change following the Sale Closing. Pursuant to an order entered on November 15, 2017, as
17 docket number 218, the Court authorized the Debtors to effectuate a change of their corporate
18 name to ICPW Liquidation Corporation without further action by the Board or Shareholders.
19

20 4. **Administrative Matters.**

21 The Debtors were required to address the various administrative matters attendant to the
22 commencement of the Cases, which required an extensive amount of work by the Debtors'
23 employees and management and their bankruptcy counsel, LNBYB. These matters included the
24 preparation of the Debtors' Schedules of Assets and Liabilities and Statement of Financial Affairs
25 and the UST compliance package. The Debtors have subsequently filed a number of amendments
26 to their bankruptcy schedules. The Debtors have made every effort to comply with their duties
27
28

1 under 11 U.S.C. §§ 521, 1106 and 1107 and all applicable UST guidelines, including the filing of
2 the Debtors' monthly operating reports. The Debtors attended their initial interview with the UST
3 and the meeting of creditors required under 11 U.S.C. § 341(a).

4 **5. Employment of Professionals.**

5 A total of nine professionals have been employed in the Cases. The Debtors have
6 employed four professionals: LNBYB as their bankruptcy counsel; Stubbs Alderton & Markiles,
7 LLP as their special corporate and securities, special trademark, and special litigation counsel;
8 Craig Hallum Capital Group LLC as their financial advisor; and BPE&H An Accountancy
9 Corporation as the Debtors' certified public accountant to, among other things, (i) analyze the
10 2015 federal and state tax returns and determine whether they need to be amended, (ii) prepare
11 and file the Debtors' 2016 federal and state tax returns, (iii) prepare an estimate of whether any
12 taxes are owing in 2017 resulting from the Debtors' asset sale to BBI and, if so, how much.⁵ The
13 OCEH has employed three professionals: Dentons US LLP as its bankruptcy counsel; Michael D.
14 Schwarzmman as its financial advisor; and Solomon & Cramer LLP as special litigation counsel to
15 handle certain litigation matters for the OCEH prior to the Effective Date. The Trustee is expected
16 to employ Dentons US LLP as its general counsel and Solomon & Cramer LLP and to handle
17 certain litigation for the Trust after the Effective Date. The OCUC has employed two
18 professionals: Brown Rudnick LLP as its bankruptcy counsel and Province, Inc. as its financial
19 advisor.

20 The Debtors requested the law firm of Skadden, Arps, Slate, Meagher & Flom LLP
21 ("Skadden") to provide certain post-petition legal services to the Debtors and/or the independent
22 board of directors of the Debtors which served as Skadden's pre-petition client. As of the date of
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28 ⁵ The Trust will have the responsibility of preparing the 2017 and 2018 tax returns for the Debtors as well
as any tax returns that the Trust itself may be required to file.

1 this Plan, the Debtors have not yet filed an application to employ Skadden with the Court. In late
2 December, 2017, the Debtors, the OCEH and Skadden entered into an agreement pursuant to
3 which Skadden was paid the full amount of its pre-petition claim in the amount of \$342,141.79,
4 and the parties all agreed that Skadden shall have an allowed post-petition administrative claim
5 against the Debtors' estates in the fixed amount of \$107,858.21 related to post-petition legal fees
6 incurred by Skadden on behalf of the Debtors, which, subject to the approval of the Court, shall
7 be paid in full, and the parties all agreed to work in good faith to determine the optimal manner in
8 which to obtain a Court order authorizing the Debtors to pay this fixed amount of \$107,858.21 to
9 Skadden.
10

11 **6. Executory Contracts and Unexpired Leases.**

12 In connection with the Sale Closing, BBI had the right to designate which executory
13 contracts and which unexpired leases that BBI desired to take an assignment of, and all of those
14 designated executory contracts and unexpired leases were deemed assumed by the Debtors and
15 assigned to BBI effective as of the Sale Closing. Pursuant to the Sale Order, all of the Debtors'
16 executory contracts and unexpired leases that were not assumed and assigned to BBI were
17 deemed rejected as of the Sale Closing, with the exception of the two supplier agreements with
18 GGS and Grainger whose rejection can happen only following the entry of an order of the Court
19 approving such rejection. As indicated above, the Debtors have filed a motion to reject the two
20 supplier agreements with GGS and Grainger. [See p. 18-19, *supra*].
21

22 **7. The OCEH's Objection to the Radians' Claims and Lawsuit Against Radians.**

23 On December 5, 2017, the OCEH completed its Challenge analysis and timely filed an
24 objection to Radians' claim and a lawsuit against Radians for (1) Duress, (2) Breach of the
25 Covenant of Good Faith and Fair Dealing, (3) Unjust Enrichment, and (4) avoidance and recovery
26 of property transfer (the "Radians Claim Objection and Lawsuit").
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III. CLAIMS SUMMARY

A. Secured Claims.

As a result of the fact that Radians was paid in full in connection with the Sale Closing, there is no remaining secured debt in the Cases. However, Radians contends that if it prevails in the Radians Claim Objection and Lawsuit, it will be entitled to payment of its legal fees and costs incurred in connection with that litigation. Although neither Radians' Claim No. 20-1 (Case No. 17-bk-12408) nor Claim No. 7-1 (Case No. 17-bk-12409) seek contingent indemnification, the Plan Proponents have classified this contingent and disputed claim as the sole class 3 claim under this Plan.

B. Administrative Claims.

Separate and apart from the Remaining Estate Funds, as of the date of this Plan (*i.e.*, February 9~~12~~, 2018), the Debtors have approximately \$470,000 remaining in their debtor-in-possession accounts which the Debtors use to pay their operating expenses and costs of administering the Estates. In connection with the sale to BBI, the Debtors retained all of their cash, and the Debtors' used that cash to pay their non-professional fee administrative claims, consisting primarily of trade debt to vendors who extended post-bankruptcy trade debt to the Debtors. As of the date of this Plan, the Debtors are not aware of any outstanding non-professional fee administrative expenses as the Debtors believe they have already paid all such non-professional fee administrative expenses in full other than continuing quarterly fees owing to the UST and any accrued but unpaid income tax claims resulting from the Debtors' sale to BBI. The Debtors therefore currently believe that the only administrative claims left to be paid in the Cases will be the final outstanding allowed fees and expenses of the professionals employed in the Cases which will be paid out of the Remaining Estate Funds, their operating expenses and

1 costs of administering the Estates, continuing quarterly fees owing to the UST and any tax claims
2 resulting from the Debtors' sale to BBI. The Debtors project that if the Effective Date of this Plan
3 is February 28, 2018, the Debtors will have approximately \$350,000 left in their debtor-in-
4 possession accounts which the Debtors will turn over to the Trust on the Effective Date.

5
6 Based upon a preliminary analysis, the Debtors' accountant (BPE&H) estimates that the
7 Debtors will owe approximately \$130,000 in federal income taxes and approximately \$60,000 in
8 state income taxes (divided evenly between California and Texas) resulting from the Debtors'
9 asset sale to BBI.

10 The Court must approve all professional fees and expenses before they may be paid. For
11 all professional fees and expenses, except fees owing to the Clerk of the Bankruptcy Court and
12 fees owing to the UST, the professional in question must file and serve a properly noticed final
13 fee application, and the Court must rule on the final fee application. Only the amount of fees and
14 expenses allowed by the Court will be paid under this Plan. The Court hearing on the final
15 applications filed by the professionals employed in the Cases will be after the Effective Date,
16 since the final fees and expenses being requested by the professionals will include fees and
17 expenses incurred through the Effective Date. As detailed below, this Plan provides a total
18 estimated amount of final fees and expenses of all of the professionals employed in the Cases of
19 between \$1,219,558 and \$1,419,558.
20
21

22 **C. Pre-Petition Priority Wage Claims.**

23 The Debtors believe that they have paid all of their outstanding scheduled pre-petition
24 priority wage claims and post-petition wage claims and that none of the Debtors' former
25 employees are entitled to be paid any further money. Jeffrey Cordes and William Aisenberg
26 ("Cordes and Aisenberg"), two former employees of the Debtors, each filed a priority wage claim
27 in the amount of \$12,850. As explained below, the Debtors and the OCEH have entered into the
28

1 Cordes/Aisenberg Assignment Stipulation (defined below) pursuant to which the Debtors
2 assigned to the OCEH all rights and standing of the Estates against Cordes and Aisenberg. ~~TA~~
3 ~~further explained below, the OCEH has currently intends to filed~~ (i) an objection to the claims
4 filed by Cordes and Aisenberg against the Estates, and (ii) an action against Cordes and
5 Aisenberg seeking damages for pre-petition harm arising from their conduct.
6

7
8 **D. Pre-Petition Priority Tax Claims.**

9 The Debtors' scheduled owing the following priority tax claims: \$600 to the California
10 Board of Equalization and \$2,294 to the California Comptroller of Public Accounts. The Internal
11 Revenue Service filed Claim no. 2 in the Nevada case asserting a priority tax claim in the amount
12 of \$2,000. ~~The IPFS Corporation filed Claim no. 3 in the California case asserting a secured~~
13 ~~claim in the amount of \$30,725.49, which claim has been reduced and paid in full, and the~~
14 ~~Internal Revenue Service filed Claim no. 3 in the California case asserting a secured claim in the~~
15 ~~amount of \$30,725.49. The California Franchise Tax Board filed a priority tax claim in the~~
16 ~~amount of \$829.28.~~ Once the Debtors complete their tax returns, the Debtors will either pay these
17
18 filed priority tax claims or whatever taxes the Debtors actually owe and, if appropriate, will file
19 objections to any tax claims the Debtors dispute. One of the primary purposes for the Debtors'
20 employment of an accounting firm at this time was to provide a preliminary estimate of whether
21 the Debtors owe any pre-petition taxes. The Debtors' accountant (BPE&H) preliminarily
22 estimates that the Debtors will owe approximately \$5,000 of pre-petition taxes to the State of
23 Texas.
24

25 **E. General Unsecured Claims.**

26 As of the date of this Plan (i.e., ~~Febr~~January 24~~2~~, 2018), the only outstanding general
27 unsecured claims not yet allowed consist of that portion of the seven claims the Debtors have
28

1 filed objections to that the Debtors dispute (since the Debtors have already paid that portion of
2 those claims the Debtors do not dispute together with post-petition interest on those portions of
3 the claims), and a small number of claims the OCEH will be handling - - (collectively, the
4 "Disputed Class 1 Claims"). Attached hereto as Exhibit "1" is a detailed master claims chart (the
5 "Claims Chart"), which shows all known claims in the Cases and their current status. The Claims
6 Chart contains seventeen columns, as follows:
7

- 8 • the far column to the left lists the name of the respective creditor;
- 9 • the next column to the right indicates whether the creditor's claim was filed or
10 scheduled as a claim against ICPW California, ICPW Nevada or both Debtors;
- 11 • the next four columns to the right pertain to proofs of claim filed by the creditors,
12 including the claim number, the amount of the claim asserted, and the priority of
13 the asserted claim (*i.e.*, secured, priority or general unsecured);
- 14 • the next four columns to the right pertain to the claims that were scheduled by the
15 Debtors, including the amount of the scheduled claim, the priority of the scheduled
16 claim (*i.e.*, secured, priority or general unsecured), and whether the Debtors
17 believe the claim to be contingent, unliquidated or disputed;
- 18 • the next column to the right indicates the allowed amount of each claim not
19 including any post-petition interest;
- 20 • the next column to the right indicates the amount of post-petition payments made
21 by the Debtors to the holders of allowed claims, inclusive of post-petition interest
22 paid to the claimants;
- 23 • the next column to the right indicates the amount that each outstanding claim (or
24 portion thereof) would be allowed at only if the claim is allowed in the amount
25 scheduled by the Debtors (meaning that the Debtors are successful with all of their
26 pending objections to claims and all other claims the Debtors will object to - *i.e.*,
27 the "best case scenario" for the Estates and the Shareholders);
- 28 • the next column to the right indicates the amount that each outstanding claim (or
portion thereof) would be allowed at if the claim is allowed in the amount
scheduled or asserted (meaning that no objection is ever filed to the claim or an
objection is filed but the claimant prevails - *i.e.*, the "worst case scenario" for the
Estates and the Shareholders);
- the next column to the right indicates the remaining claims in the Cases (excluding
post-petition interest) after taking into account all of the claims and post-petition
interest that was paid by the Debtors on December 22, 2017 and with the
assumption that the Debtors prevail on all of their seven pending claim objections;
- the next column to the right indicates the total amount of the Disputed Class 1
Claims at the amounts asserted by the holders of the Disputed Class 1 Claims with
post-petition interest through the projected Plan Effective Date of February 28,

2018, with the assumption that the Debtors prevail on all of their seven pending claim objections, which, indicated, totals \$356,348.1475,614.95; and

- the far column to the right indicates the total amount of the Disputed Class 1 Claims at the amounts asserted by the holders of the Disputed Class 1 Claims with post-petition interest through December 31, 2018, which totals \$359,998.8179,773.89. The OCEH (or the Trustee of the Trust following the Effective Date) intends to file objections to all Disputed Class 1 Claims unless the OCEH is able to negotiate mutually acceptable resolutions with the holders of Disputed Class 1 Claims, and the OCEH believes that the final amount of the Disputed Class 1 Claims which are ultimately allowed by the Court if the claims are adjudicated or if they are settled will be less than the amounts set forth in the Claims Chart.

Unless the Trustee chooses to have someone other than the Escrow Agent serve as the disbursing agent for Disputed Class 1 Claims, after the Escrow Agent pays the final allowed fees and expenses of the professionals employed in the Cases and before the Escrow Agent delivers to the Trustee the balance of the Remaining Estate Funds, the Escrow Agent will retain in the Trust Account a sum of money equal to the total amount of the Disputed Class 1 Claims with post-petition interest through December 31, 2018, which, as indicated above, totals \$359,998.8179,773.89 (the “Residual Estate Funds”). The Escrow Agent will pay any Disputed Class 1 Claim, together with post-petition interest at the rate of 1.23% per annum (which was the applicable interest on the Petition Date according to the bankruptcy court website: (<http://www.cacb.uscourts.gov/post-judgment-interest-rates>) (the “Applicable Interest Rate”), only after an order of the Court is entered (whether such order is the result of a settlement reached between the holder of the Disputed Class 1 Claim and the OCEH or the Trustee or following a contested claim objection hearing) that turns the Disputed Class 1 Claim into an allowed class 1 claim (“Allowed Class 1 Claim”) and such order becomes a final order of the Court not subject to any pending appeal (a “Final Order”). ~~(“Allowed Class 1 Claim”)~~. Each time a Disputed Class 1 Claim becomes an Allowed Class 1 Claim and the Escrow Agent pays the Allowed Class 1 Claim, together with post-petition interest at the Applicable Interest Rate, out of the Residual Estate Funds, the Escrow Agent will deliver to the Trustee the difference between the amount of

1 the Disputed Class 1 Claim and the amount of the Allowed Class 1 Claim that is paid, together
2 with post-petition interest at the Applicable Interest Rate. For example, if a particular class 1
3 claimant filed a class 1 claim in the amount of \$75,000 that the OCEH or the Trustee disputed,
4 and the holder of the Disputed Class 1 Claim ultimately ends up with an Allowed Class 1 Claim
5 in the amount of \$25,000 (whether as a result of a settlement reached between the class 1 claimant
6 and the OCEH or the Trustee or following a contested claim objection hearing), the Escrow Agent
7 will pay out of the Residual Estate Funds to the class 1 claimant on account of the class 1
8 claimant's Allowed Class 1 Claim the sum of \$25,000 plus post-petition interest at the Applicable
9 Interest Rate computed through the date of payment, and the Escrow Agent will deliver the
10 balance of the Residual Estate Funds to the Trustee, which would be in the amount of \$50,000
11 less the amount of post-petition interest paid to the holder of the Allowed Class 1 Claim.
12

13
14 On November 21, 2017, as docket number 241, the Debtors (with the full support of the
15 OCEH) filed a motion with the Court in which the Debtors requested the Court to exercise its
16 broad judicial powers under § 105(a) of the Bankruptcy Code to permit the Debtors (with the
17 support of the OCEH) to implement the "Claims Allowance Protocol" described below (the
18 "Claims Protocol Motion"). On December 14, 2017, as docket number 345, the Court granted the
19 Claim Protocol Motion. Below is a summary of how pre-petition claims that the Debtors and the
20 OCEH agree should be paid as Allowed Claims can be paid in accordance with the Claim
21 Protocol Motion.
22

23 CLAIMS ALLOWANCE PROTOCOL

- 24 • If the Debtors and the OCEH agree with the amount and priority of a scheduled or
25 filed claim without any modification, the Debtors and the OCEH will file a joint notice
26 with the Court signed by counsel to both the Debtors and the OCEH advising the
27 Court of the same. Each such notice will identify the name of the creditor, the claim
28

number if it pertains to a proof of claim filed by the creditor, and the amount and priority of the claim that will be deemed allowed. Once that notice has been filed with the Court, the claim will be deemed permanently allowed in that amount and with that priority, and the Escrow Agent will be deemed authorized to pay the allowed claim out of the Remaining Estate Funds.

- If the Debtors and the OCEH are able to reach an agreement with a particular creditor on the amount of a claim which is less than the amount or of a different priority than the scheduled or filed claim, the Debtors and the OCEH will file a joint stipulation signed by the Debtors, the OCEH and the creditor advising the Court of the same. Each such stipulation will identify the name of the creditor, the claim number if it pertains to a proof of claim filed by the creditor, and the amount and priority of the claim that will be deemed allowed. Once that stipulation has been filed with the Court, the claim will be deemed permanently allowed in that amount and with that priority without the need for any Court order, and the Escrow Agent will be deemed authorized to pay the allowed claim out of the Remaining Estate Funds.

IV. CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS

A. What Creditors and Shareholders Will Receive Under this Plan.

As required by the Bankruptcy Code, this Plan classifies claims and interests in various classes according to their right to priority. This Plan states whether each class of claims or interests is impaired or unimpaired. This Plan sets out the treatment each class will receive.

B. Unclassified Claims.

Certain types of claims are not placed into voting classes; instead they are unclassified. They are not considered impaired and they do not vote on this Plan because they are automatically entitled to specific treatment provided for them in the Bankruptcy Code. As such,

the Plan Proponents have not placed the following claims in a class.

1. Administrative Expenses.

Administrative expenses are claims for costs or expenses of administering the Cases which are allowed under Bankruptcy Code § 507(a)(2). The Bankruptcy Code requires that all administrative claims be paid in full on the Effective Date unless a particular claimant agrees to a different treatment.

The following chart lists all of the Debtors' § 507(a)(2) known administrative claims and their treatment under this Plan.⁶

<u>Name</u>	<u>Amount Owed</u>	<u>Treatment</u>
Clerk's Office Fees	\$0	Paid in full on the Effective Date out of the Remaining Estate Funds
Office of the U.S. Trustee Fees	\$0	Paid in full on the Effective Date out of the Remaining Estate Funds
Levene, Neale, Bender, Yoo & Brill L.L.P. ("LNBYB"), bankruptcy counsel to the Debtors	\$250,000-\$300,000 (est.), which would be in addition to the post-petition fees and expenses paid to LNBYB by the Debtors	Paid in full out of the Remaining Estate Funds within five days following the date of entry of an order of the Court allowing such fees and expenses
Stubbs Alderton & Markiles, LLP ("SAM"), special corporate and securities, special trademark, and special litigation counsel for the Debtors	\$100,000 (est.), which would be in addition to the post-petition fees and expenses paid to SAM by the Debtors	Paid in full out of the Remaining Estate Funds within five days following the date of entry of an order of the Court allowing such fees and expenses
Dentons US LLP ("Dentons"), counsel to the OCEH	\$550,000-\$700,000 (est.), which would be in addition to the post-	Paid in full out of the Remaining Estate Funds within five days following

⁶ For all of the reasons explained above, the Debtors expect that by the time of Plan Confirmation Hearing, all allowed administrative claims other than the remaining outstanding fees and expenses of the professionals employed in the Cases will have been paid in full by the Debtors out of the Debtors' operating funds (other than additional taxes owing as a result of the asset sale to BBI). Also, this chart does not include any fees or expenses owing to either Craig Hallum Capital Group LLC, financial advisor to the Debtors, or to Province, Inc., financial advisor to the OCUC, because their fees and expenses have been allowed by the Court on a final basis and have already been paid in full

	petition fees and expenses paid to Dentons by the Debtors	the date of entry of an order of the Court allowing such fees and expenses
Michael D. Schwarzmann ("MDS"), financial advisor to the OCEH	\$10,000 (est.), which would be in addition to the post-petition fees and expenses paid to MDS by the Debtors	Paid in full out of the Remaining Estate Funds within five days following the date of entry of an order of the Court allowing such fees and expenses
Brown Rudnick LLP ("BR"), counsel to the OCUC	\$50,000 (est.), which would be in addition to the post-petition fees and expenses paid to BR by the Debtors	Paid in full out of the Remaining Estate Funds within five days following the date of entry of an order of the Court allowing such fees and expenses
BPE&H An Accountancy Corporation as the Debtors' certified public accountant	\$18,700 (est.), which would be in addition to the \$10,000 post-petition retainer paid to BPE&H by the Debtors as authorized by the Court.	Paid in full out of the Remaining Estate Funds upon completion of the various tasks BRE&H has been employed to perform with no further Court order required
Solomon & Cramer LLP, special litigation counsel to the OCEH	\$133,000 (est.)	Paid in full out of the Remaining Estate Funds within five days following the date of entry of an order of the Court allowing such fees and expenses
Skadden Skadden, Arps, Slate, Meagher & Flom LLP	\$107,858.21 as a fixed allowed administrative claims pursuant to an agreement reached between Skadden, the Debtors and the OCEH for post-petition services provided by Skadden	Paid in full out of the Remaining Estate Funds within five days following the date of entry of an order of the Court allowing this fixed administrative claim
TOTAL	\$1,219,558.21-\$1,419,558.21est.	Paid in the manner described above

Court Approval of Professional Fees and Expenses Required and Source of Funding

Payment:

The Court must approve all professional fees and expenses listed in the chart above before they may be paid. For all professional fees and expenses except fees owing to the Clerk of the

1 Bankruptcy Court and fees owing to the UST, the professional in question must file and serve a
2 properly noticed final fee application, and the Court must rule on the final fee application. Only
3 the amount of fees and expenses allowed by the Court will be paid under this Plan. The amounts
4 set forth above simply represent the Plan Proponents' best estimate as to the amounts of the
5 outstanding fees and expenses projected to be owed to the remaining professionals employed by
6 the Debtors, the UCUC and the OCEH (with input from the various professionals). The actual
7 amounts of the outstanding fees and expenses to be owed to the remaining professionals
8 employed by the Debtors, the UCUC and the OCEH may be higher or lower than the figures set
9 forth above. The actual amount of the fees and expenses to be owed to the remaining
10 professionals employed by the Debtors, the UCUC and the OCEH depends upon, among other
11 things, the fees incurred related to whether the Debtors and/or the OCEH engage in any
12 substantial litigation regarding the confirmation of this Plan, the Radians Claim Objection and
13 Lawsuit, objecting to claims or any other matter. To the extent the Debtors and/or the OCEH
14 engage in any such substantial litigation, the professionals involved are likely to incur
15 professional fees and expenses in excess (and possibly substantially in excess) of the estimated
16 figures set forth above. By the Plan Proponents including these estimated figures in the above
17 chart, creditors and Shareholders are not acknowledging the validity of, or consenting to the
18 amount of, any of these administrative claims, and creditors and Shareholders are not waiving any
19 of their rights to object to the allowance of any of these administrative claims. Similarly,
20 professionals who have been employed in the Cases are not being deemed to have agreed that the
21 figures set forth above represent any ceiling on the amount of fees and expenses that they have
22 incurred or are entitled to seek to be paid pursuant to Court order as such fees and expenses are
23 just estimates provided by the Plan Proponents (with input from the various professionals) at the
24 time of the preparation of this Plan.
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1 **2. Priority Tax Claims.**

2 Priority tax claims include certain unsecured income, employment and other taxes
3 described by § 507(a)(8) of the Bankruptcy Code. Section 1129(a)(9)(C) of the Bankruptcy Code
4 requires that each holder of such a § 507(a)(8) priority tax claim receive regular installment
5 payments of a total value, as of the Effective Date, equal to the allowed amount of such allowed
6 tax claims, over a period ending not later than five years after the Petition Date. The limited
7 number of potential priority tax claims are identified above and are included in the Claims Chart.
8 The Debtors are continuing with their review of the scheduled and filed priority tax claims. The
9 Debtors or the Trustee will file objections to any filed tax claims which the Debtors or the Trustee
10 believe are not valid. The Debtors are not agreeing to the allowance of any such filed tax claims,
11 and the Debtors reserves all rights to file and prosecute objections to any such filed tax claims.
12 The ~~Debtors~~ Escrow Agent will pay all allowed priority tax claims in full out of the Remaining
13 Estate Funds on the Effective Date unless there is a dispute with any such priority tax claim. If
14 there is a dispute, the Escrow Agent will pay any such disputed priority tax claim out of the
15 “Residual Estate Funds” ~~(defined below)~~ within ten days following the date of entry of an order
16 of the Court allowing such disputed priority tax claim, inclusive of interest accrued following the
17 Effective Date at the statutory rate, and the amount of the Residual Estate Funds retained by the
18 Escrow Agent will be increased by the amount of any asserted disputed priority tax claims plus
19 interest computed through December 31, 2018.

20 **C. Classified Claims and Interests.**

21 **1. Classes of Secured Claims – Class 3.**

22 Class 3 is designated in this Plan as unimpaired.

1 As described above, as result of the fact that Radians was paid in full in connection with
2 the Sale Closing, there is no remaining secured debt in the Cases. However, as also indicated
3 above, Radians contends that if it prevails in the Radians Claim Objection and Lawsuit, it will be
4 entitled to payment of its legal fees and costs incurred in connection with that litigation. The Plan
5 Proponents have classified this contingent and disputed claim of Radians as the sole class 3 claim
6 under this Plan. In addition to the Residual Estate Funds, unless otherwise ordered by the Court,
7 the Escrow Agent will retain the total sum of \$600,000.00 (the "Class 3 Reserve Fund") in a
8 segregated trust account which will be used to pay any class 3 claim which is allowed by order of
9 the Court ("Class 3 Allowed Claim"). The Escrow Agent will pay any Class 3 Allowed Claim
10 out of the Class 3 Reserve Fund within five business days following the entry of an order of the
11 Court allowing such Class 3 Allowed Claim and such order becoming a Final Order, and the
12 Escrow Agent will deliver the balance of the Class 3 Reserve Fund, if any, to the Trustee.

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16 **2. Class of Priority Unsecured Claims – Class 4.**

17 Class 4 is designated in this Plan as unimpaired.

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21 Certain priority claims that are referred to in Bankruptcy Code §§ 507(a)(3), (4), (5), (6),
22 and (7) are required to be placed in classes. These types of claims are entitled to priority
23 treatment as follows: the Bankruptcy Code requires that each holder of such a claim receive cash
24 on the Effective Date equal to the allowed amount of such claim. However, a class of unsecured
25 priority claim holders may vote to accept deferred cash payments of a value, as of the Effective
26 Date, equal to the allowed amount of such claim. The limited number of potential non-tax
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1 priority claims are identified above and are included in the Claims Chart. The Debtors are
2 continuing with their review of the scheduled and filed non-tax priority claims. The Debtors or
3 the Trustee will file objections to any filed non-tax priority claims which the Debtors or the
4 Trustee believe are not valid. The Debtors are not agreeing to the allowance of any such filed
5 non-tax priority claims, and the Debtors reserve all rights to file and prosecute objections to any
6 such filed non-tax priority claims. The Escrow Agent will pay all allowed non-tax priority claims
7 in full out of the Remaining Estate Funds on the Effective Date unless there is a dispute with any
8 such non-tax priority claim. If there is a dispute, the Escrow Agent will pay any such disputed
9 non-tax priority claim out of the Residual Estate Funds within ten days following the date of entry
10 of an order of the Court allowing such disputed non-tax priority claim. As indicated above, the
11 only non-tax priority claims that the Debtors are aware of are the two priority wage claims in the
12 amount of \$12,850 filed by Cordes and Aisenberg (the “Cordes and Aisenberg Priority Claims”).
13 The OCEH has filed (i) an objection to the claims filed by Cordes and Aisenberg against the
14 Estates, and (ii) an action against Cordes and Aisenberg seeking damages for pre-petition harm
15 arising from their conduct. The —Plan Proponents have classified the disputed Cordes and
16 Aisenberg Priority Claims as part of class 4 under this Plan. In addition to the Residual Estate
17 Funds and the Class 3 Reserve Fund, unless otherwise ordered by the Court, the Escrow Agent
18 will retain in a segregated trust account the total sum of \$300,000.00 (the “Class 4 Reserve
19 Fund”) which will be used to pay the Cordes and Aisenberg Priority Claims to the extent allowed
20 by the Court plus any indemnification claims of Cordes and Aisenberg to the extent allowed by
21 the Court and not otherwise satisfied by the Debtors’ D&O Insurance. The Escrow Agent will
22 pay any such allowed claims of Cordes and Aisenberg (“Cordes and Aisenberg Allowed Claims”)
23 out of the Class 4 Reserve Fund within five business days following the entry of an order of the
24 Court allowing any such Cordes and Aisenberg Allowed Claims and such order becoming a Final
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Order, and the Escrow Agent will deliver the balance of the Class 4 Reserve Fund, if any, to the Trustee.

3. Class of General Unsecured Claims – Class 1.

Class 1 is designated in this Plan as unimpaired.

General unsecured claims are pre-petition unsecured claims which are not entitled to priority under Bankruptcy Code §507(a). The treatment of any remaining pre-petition unsecured claims is explained above.[See Section III.E. General Unsecured Claims and Claims Allowance Protocol at pp. 28-32, *supra*.]

Since these are solvent Estates, the Plan Proponents agree that pursuant to the Ninth Circuit case of *In re Cardelucci*, 285 F.3d 1231 (9th Cir. 2002) and other prevailing law, all general unsecured creditors existing as of the Petition Date that ultimately became, or which ultimately become, Allowed Class 1 Claims, are entitled to be paid post-petition interest from the Petition Date through the date that they were paid or will be paid the full principal amount of their Allowed Class 1 Claim, with the rate of post-petition interest that they are entitled to be paid to be calculated at the federal interest rate for judgments as of the Petition Date as explained above. All non-disputed general unsecured claims have already been paid by the Debtors with post-petition interest in accordance with prior orders of the Court and the Court order granting the Claim Protocol Motion.

Class 1 claims are not impaired by this Plan and therefore do not vote on this Plan because they are conclusively presumed to have accepted this Plan, and solicitation of acceptances to this Plan from class 1 claim holders is not required, pursuant to § 1126(f) of the Bankruptcy Code.

4. Class of Shareholders – Class 2.

1 Class 2 is designated in this Plan as unimpaired.

2 Class 2 consists of the Shareholders, who are the equity holders of ICPW Nevada as of the
3 Record Date. After all allowed post-bankruptcy claims have been paid in full, including the final
4 fees and expenses of all professionals employed in the Cases, and a reserve maintained of the
5 Residual Estate Funds to be used to pay the Disputed Class 1 Claims that become Allowed Class
6 1 Claims, the balance of the funds in the Estates will be transferred to the Trust and ultimately
7 distributed to the record Shareholders of ICPW Nevada.
8

9 On the Effective Date, a trust (the "Trust") will be created pursuant to this Plan and the
10 Trust Agreement solely for the benefit of the Shareholders. The Effective Date of this Plan shall
11 also be the effective date of the Trust. It is currently anticipated that the members of the OCEH
12 (Scott Jarus, Ron Chez and Patrick O'Brien) will serve as the initial members of the Trust Board
13 ~~and one additional person to be later named also will serve as an initial member of the Trust~~
14 ~~Board~~ (the "Trust Board Members"). The Trustee of the Trust will be proposed by the OCEH and
15 is subject to approval by the Court at or prior to the Plan Confirmation Hearing. The Trustee's
16 identity and background will be identified in a filing with the Court by the OCEH prior to the
17 Plan Confirmation Hearing. A copy of the Trust Agreement is attached as Exhibit "2" to this
18 Plan. The following is just a summary of the Trust, the Trust Agreement and the treatment of
19 Shareholders under this Plan. Shareholders should read the Trust Agreement and this Plan if they
20 want to understand more details.
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23 The record date for distributions to Shareholders proposed as part of this Plan will be the
24 later of (i) the date on which the Plan confirmation hearing is held (which is expected to be on
25 February 12, 2018 – the "Plan Confirmation Hearing"), (ii) the date on which the Court enters an
26 order confirming this Plan, and (iii) such other date not less than two days after FINRA has
27 agreed to halt trading in shares of ICPW Nevada (the "Record Date"). It is the intention of the
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1 Debtors, with the full support of OECH, to advise FINRA of the proposed Record Date not less
2 than ten (10) days in advance of such date. The period of time between the Plan Confirmation
3 Hearing but prior to the Effective Date is hereafter referred to as the “Gap Period”.

4 Under this Plan, all of the outstanding shares of common stock of ICPW Nevada (the
5 “Common Stock”) existing on the Effective Date will be cancelled, and the Record Holders who
6 owned shares of Common Stock on the Record Date will become holders of non-transferable
7 beneficial interests in the Trust in exchange for those shares. The Debtors or the Trustee will seek
8 to terminate the reporting obligations of ICPW Nevada in compliance with federal and state
9 securities laws.

10 Pursuant to this Plan, the Board of Directors of ICPW Nevada, acting in its capacity as the
11 administrator of ICPW Nevada’s 2006 Stock Incentive Plan, as amended (the “SIP”), will
12 exercise its authority under the SIP, in connection with the Sale Closing and ICPW’s liquidation
13 and dissolution pursuant to this Plan, to cancel on the date that is two business days prior to the
14 Record Date (the “Option Cancellation Date”) outstanding options to purchase Common Stock
15 issued under the SIP without payment of any consideration, and to notify (at least 10 days prior to
16 the Option Cancellation Date) each holder of such outstanding options of such holder’s right to
17 exercise the vested portion of such outstanding options by the earlier of (x) their current
18 expiration date or (y) the Option Cancellation Date. Subject to the terms of the SIP, the Trustee
19 will recognize all authorized shares of Common Stock issued to holders of Options that have been
20 exercised and fully paid prior to the Option Cancellation Date (the “Option Shares”) as belonging
21 to Record Holders. The Option Shares will be included in the total of Record Shares to be
22 cancelled as of the Effective Date.

23 The Trust is being established for the exclusive benefit of the Record Holders, net of
24 claims and expenses payable under the express terms of the Trust. All claims and causes of
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1 action that belong to the Estates are being assigned under this Plan to the Trust for the exclusive
2 benefit of the Record Holders, and any net proceeds from such claims and causes of action will be
3 for the exclusive benefit of Record Holders.

4 As indicated above, on not less than ten (10) days advance notice, the Plan Proponents
5 will seek FINRA's approval of a halt in trading of the Common Stock during the Gap Period.
6 The Plan Proponents believe that a trading halt during the Gap Period is necessary to protect
7 investors and the public interest. The Plan Proponents believe that the cancellation of the
8 Common Stock as of the Effective Date constitutes an extraordinary event that is likely to have a
9 material effect on the market for the Common Stock, with the potential to cause major disruption
10 to the marketplace or significant uncertainty in the settlement and clearance process. Since only
11 Record Holders will receive distributions from the Estates based on the shares of the Common
12 Stock they hold as of the Record Date, the Plan Proponents believe that it would be untenable to
13 allow trading in the Common Stock following the Record Date (since purchasers of such shares
14 will receive no right to receive distributions from the Estates as a result of such purchases).
15 While the Debtors intend to notify the market, through Current Reports on Form 8-K and
16 concurrently issued press releases, of the process for determining Record Holders, the Record
17 Date, and the estimated initial distribution to Record Holders, the Plan Proponents believe that an
18 extraordinary event trading halt is the most effective method for protecting investors who may
19 seek to trade in the Common Stock from and after the Record Date. Finally, neither the market,
20 nor investors nor the Debtors would benefit from trading what would clearly be a worthless
21 security.

22 In order to effectuate the establishment of a Record Date prior to the Effective Date, (a)
23 the Plan Proponents are in the process of requesting guidance from FINRA regarding
24 implementing an extraordinary event trading halt during the Gap Period, and any additional
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1 advance disclosure that FINRA may require in connection with such trading halt; and (b)
2 consistent with this Plan, the Debtors, acting as Plan Administrator of the SIP, will cancel
3 outstanding options under the SIP and will notify the holders of such options of their right to
4 exercise such options for Option Shares pursuant to the terms of the SIP.
5

6 The Plan Proponents have preliminarily estimated an initial distribution to the Record
7 Holders of approximately 11.28 cents per current outstanding share of Common Stock, without
8 considering the effect of authorized Option Shares issued between the date of this Plan and the
9 Record Date. Depending upon the results resolution of claim objections and expected pursuit of
10 transferred estate causes of action, it is possible that there may be one or more secondary
11 distributions to the Record Holders of amounts not currently subject to reasonable estimation.
12 The preliminary estimate is based upon the following estimates and assumptions: (1) the
13 Remaining Estate Funds are in the amount of \$13,829,001 as of December 31, 2017; (2) there will
14 be approximately \$350,000 of funds remaining in the Debtors' debtor-in-possession account on
15 February 28, 2018 that will be turned over to the Trust on the Effective Date; (3) the Effective
16 Date will be on or about February 28, 2018; (4) there will be approximately \$1,419,558 of final
17 fees and expenses of the professionals employed by the Estates allowed by the Court through
18 February 28, 2017; (5) there will be a reserve of \$379,774 maintained by the Disbursing Agent
19 for Disputed Class 1 Claims computed at the amounts asserted by the holders of the Disputed
20 Class 1 Claims with post-petition interest through December 31, 2018; (6) there will be \$195,000
21 of taxes owing from the Debtors' prior asset sale to BBI between federal and state taxes; (7) there
22 will be a total of \$25,000 of additional taxes owing by the Debtors; (8) the Trustee will retain an
23 initial reserve of \$2,500,000 to fund the Trust and the prosecution of transferred estate claims and
24 causes of action. Although the results of litigation cannot be reasonably estimated at this time,
25 the Trust provides for the possibility of one or more secondary distributions to the Record Holders
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1 after the Trustee has completed the prosecution of all claims and causes of action and wound
2 down the affairs of the Trust and dissolved the Debtors.

3 The Plan Proponents have preliminarily estimated an initial distribution of 11.28 cents per
4 share by the Trustee based upon available funds of \$9,659,669 to the Record Holders and
5 cancellation of 85,646,354 Record Shares on the Effective Date. If any of these assumptions
6 proves to be inaccurate, that will necessarily effect on a dollar-for-dollar basis (higher or lower)
7 the amount of the initial distribution to be made to the Record Holders and the availability of one
8 or more secondary distributions.
9

10 **However, this Plan is not a solicitation for acceptances by Record Holders. The**
11 **information contained in this Plan are preliminary estimates based upon all of the**
12 **assumptions above and is being provided by the Plan Proponents in good faith only for**
13 **information purposes. It should not be relied upon by any Shareholder in making any**
14 **investment decision.** Many factors which are not yet fully known could result in an increase or
15 decrease in these estimated figures, including, but not limited to: (1) the ultimate allowed amount
16 of pre-bankruptcy and post-bankruptcy claims, including the additional fees and expenses
17 incurred by the professionals employed in the Cases, (2) the fees and expenses incurred by the
18 professionals employed by the OCEH in prosecuting or defending against litigation, including the
19 current litigation involving Cordes and Aisenberg and the Radians Claim Objection and Lawsuit;
20 (3) the fees and expenses of the Trustee and his/her professionals; (4) any reserve decisions made
21 by the Trustee; (5) whether any additional taxes are owing as a result of the Debtors' asset sale to
22 BBI; (6) the outcome of the claims objections already filed by the Debtors; (7) the outcome of any
23 claims objections bought by the OCEH or the Trustee or any additional claim settlements
24 negotiated by the OCEH or the Trustee; and (8) the extent of any net recoveries obtained by the
25 OCEH or the Trustee from the pursuit of any claims or causes of action, all of which will be
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distributed to the Shareholders. But even this list is not exhaustive as there are many other factors, some which may not even be known today, that could alter the amount of any initial distribution by the Trust to the Record Holders.

The Plan Proponents believe that Shareholders are not impaired under this Plan and therefore don't vote on this Plan because they are conclusively presumed to have accepted this Plan, and solicitation of acceptances of this Plan from the Shareholders is not required, pursuant to § 1126(f) of the Bankruptcy Code. *See In re Acequia, Inc.*, 787 F.2d 1352, 1363 (9th Cir. 1986); *In re Nickels Midway Pier, LLC*, 452 B.R. 156 (D.N.J. 2011).

V. MEANS OF EFFECTUATING THIS PLAN AND IMPLEMENTATION OF THIS PLAN

A. Funding for this Plan.

This Plan will be funded from the following five sources: (i) the Remaining Estate Funds; (ii) any funds remaining in the Debtors' operating accounts on the Effective Date; (iii) any refunds or other monies owing to the Debtors which were not sold to BBI; (iv) any net proceeds obtained by the OCEH or the Trust from the pursuit of any claims or causes of action and from "Retained Assets" as defined under the APA; (v) any other monetary recoveries obtained by the Debtors prior to the Effective Date; and (vi) any other monetary recoveries obtained by the OCEH before the Effective Date or the Trust after the Effective Date.

B. Effective Date Resignation of the Management and Board of Directors of the Debtors.

The Debtors currently anticipate that effective as of the close of business on the Effective Date, at the request of the OCEH, Mr. Geoff Greulich will resign from his position as the Debtors' Chief Executive Officer; Mr. Matthew Pliskin will resign from his position as the Debtors' Chief Financial Officer; Mr. Ben Padnos will resign from his position as a Board member; and Mr. Mike DiGregorio will resign from his position as a Board member. The Trustee

1 shall have the right, but not the obligation, to employ any of these people to assist the Trustee to
2 carry out his/her duties as Trustee if he/she so desires (with the approval of the Trust Board) and
3 is able to reach an agreement with any of these individuals on mutually agreeable terms.

4 **C. Dissolution of the OCUC.**

5
6 In the event the OCUC is still in existence by the Effective Date, on the Effective Date,
7 the OCUC shall be deemed automatically dissolved without the need for any further order of the
8 Court, and all remaining members of the OCUC shall be automatically deemed discharged of any
9 further duties involving the Estates.

10 **D. Dissolution of the OCEH.**

11 On the Effective Date, the OCEH shall be deemed automatically dissolved without the
12 need for any further order of the Court, and all members of the OCEH shall be automatically
13 deemed discharged of any further duties involving the Estates in their capacity as members of the
14 OCEH.

15
16 **E. Dissolution of the Debtors.**

17 At such time as the Trustee deems appropriate, the Trustee will cause the Debtors to be
18 dissolved for all purposes under applicable non-bankruptcy law without the necessity for any
19 other or further actions to be taken by or on behalf of the Debtors, or payment of any fees,
20 charges, penalties or other amounts required by applicable non-bankruptcy law. Notwithstanding
21 the foregoing, the Trustee shall be authorized to take any actions, including the filing or recording
22 of any documents and the making of any applicable tax filings, and the payment of any fees,
23 charges or other amounts necessary or appropriate, in the reasonable opinion of the Trustee or as
24 otherwise ordered by the Court or other judicial or administrative body, to dissolve all of the
25 Debtors and to pay any such fees, charges or other amounts from the Trust Property, provided,
26 however, that the Trustee may file on behalf of the Debtors, with the official public office for
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keeping corporate records in its state or district of organization, a certificate of dissolution or equivalent document. The Trustee will take all actions on behalf of either or both of the Debtors to effectuate the dissolution of such Debtor or including, without limitation, the execution and filing or recording of such a certificate of dissolution.

F. Creation of the Trust.

On the Effective Date, a trust (the “Trust”) will be created pursuant to this Plan and the Trust Agreement solely for the benefit of the Shareholders. The Effective Date of this Plan shall also be the effective date of the Trust. It is currently anticipated that ~~Patrick O’Brien, a current member of the OCEH, will become the Trustee, subject to Court approval, and the three two other~~ current members of the OCEH (Scott Jarus, ~~and~~ Ron Chez ~~and Patrick O’Brien~~) will serve as the initial members of the Trust Board (the “Trust Board Members”). ~~It is also currently anticipated that one additional person to be later named will serve as an initial member of the Trust Board.~~

G. Appointment of Disbursing Agent.

LNBYYB (~~solely~~ in its capacity as Escrow Agent) will serve as the initial disbursing agent for the Estates at no charge to the Estates for the sole remaining purpose of (1) distributing funds from the Remaining Estate Funds to pay any Allowed Claims existing on the Effective Date; (2) to pay the allowed final fees and expenses of the professionals employed in the Cases (recognizing that the amount of the final fees and expenses of the professionals employed in the Cases will only become known following the final fee hearing which will occur after the Effective Date); ~~and~~ (3) maintaining in the Trust Account the Residual Estate Funds and paying Allowed Class 1 Claims and any allowed tax claims in the manner described above; ~~(4) maintain the Class 3 Reserve Fund and pay any Class 3 Allowed Claim out of the Class 3 Reserve Fund; and (5) maintain the Class 4 Reserve Fund and pay any Cordes and Aisenberg Allowed Claims out of the~~

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1 Class 4 Reserve Fund.⁷

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4 As an accommodation to the Estates, the Escrow Agent will not be paid any disbursing
5 agent's or escrow fee for making any disbursements ~~of any Residual Estate Funds~~ under this Plan,
6 but the Trustee will be required to pay LNBYB out of the Trust Property the reasonable fees and
7 expenses that LNBYB incurs after the Effective Date at LNBYB's regular hourly rates related to
8 time spent by LNBYB after the Effective Date in regards to this entire claims process established
9 for dealing with all dDisputed ~~cClass 1~~ Claims. Any dispute which arises or exists between the
10 Trustee and LNBYB over the amount of fees and expenses incurred by LNBYB after the
11 Effective Date in this regard shall be resolved solely by the Court after notice and a hearing.
12 LNBYB shall be entitled to charge its fees and expenses incurred in regards to any such dispute
13 only if LNBYB is successful at any such contested hearing.
14

15 All payments to be made under this Plan by the Escrow Agent ~~from the Remaining Estate~~
16 ~~Funds or the Residual Estate Funds~~ shall, unless agreed by the Escrow Agent otherwise or as
17 otherwise ordered by the Court, be delivered by the Escrow Agent by regular mail, postage
18 prepaid, to the address shown in the Debtors' bankruptcy schedules, as they may from time-to-
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20 ⁷ The OCEH reserves the right, with the consent of the Debtors which is hereby granted, to
21 change the identity of the Escrow Agent who shall maintain in the Trust Account the Residual
22 Estate Funds, the Class 3 Reserve Funds, the Class 4 Reserve Funds and pay the Allowed Class 1
23 Claims, any Class 3 Allowed Claim, any Cordes and Aisenberg Allowed Claims, and any allowed
24 tax claims in the manner described above.

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25 ⁸ ~~The OCEH reserves the right to cause this Plan to be amended not to have the Escrow Agent~~
26 ~~maintain in the Trust Account the Residual Estate Funds and pay the Allowed Class 1 Claims and~~
27 ~~any allowed tax claims in the manner described above and, instead, to cause the Escrow Agent to~~
28 ~~transfer all of the Residual Estate Funds to the Trustee. The OCEH must make this decision not~~
~~later than fifteen days prior to the Plan Confirmation Hearing. If the OCEH makes this election,~~
~~the Plan Proponents will either file an amended version of this Plan that will address how the role~~
~~that was to be handled by the Escrow Agent after the Effective Date will be handled, or the Plan~~
~~Proponents will address this issue as part of the Plan Confirmation Order.~~

time be amended in accordance with Bankruptcy Rule 1000, or, if a different address is stated in a proof of claim timely filed with the Bankruptcy Court, to such address. Checks issued to pay Allowed Claims shall be null and void (and may be voided by the Escrow Agent) if not negotiated by the recipient within sixty (60) days after the date of issuance thereof, with all funds related to such voided checks to be delivered by the Escrow Agent to the Trust.

As soon after the Effective Date as possible, the Escrow Agent will transfer to the Trustee in accordance with the manner as directed by the Trustee and in accordance with this Plan, all of the Remaining Estate Funds after deducting or reserving for each of the following: (1) all disputed tax claims in the amounts asserted by the taxing agencies; (2) all Disputed Class 1 Claims in the amounts asserted by the class 1 claimants; ~~and~~ (3) the full amount of the fees and expenses requested by all of the professionals employed in the Cases (recognizing that these figures will not become known until all such professionals filed their final applications for fees and expenses incurred through the Effective Date which necessarily will occur at some point after the Effective Date); (4) the Class 3 Reserve Fund; and (5) the Class 4 Reserve Fund.-

Once the Escrow Agent has paid (1) all Allowed Claims existing on the Effective Date; (2) the final fees and expenses of the professionals employed in the Cases the amounts allowed by the Court at a final fee hearing; and (3) all Allowed Class 1 Claims and all allowed priority tax claims, the Escrow Agent will transfer the balance of all of the remaining Residual Estate Funds to the Trustee in accordance with the manner as directed by the Trustee and in accordance with this Plan. Once the class 3 claim has been resolved to Final Order, the Escrow Agent will transfer any remaining balance in the Class 3 Reserve Fund to the Trustee in accordance with the manner as directed by the Trustee and in accordance with this Plan. Once the claims of Cordes and Aisenberg have been resolved to Final Order, the Escrow Agent will transfer any remaining balance in the Class 4 Reserve Fund to the Trustee in accordance with the manner as directed by

1 the Trustee and in accordance with this Plan. Thereafter, the Escrow Agent, and LNBVB shall
2 ~~thereafter~~ be absolved of any further responsibility, obligation or liability to the Estates resulting
3 from serving as the Escrow Agent and/or the Disbursing Agent.
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6 After the Escrow Agent has paid the final fees and expenses of the professionals employed
7 in the Cases the amounts allowed by the Court at a final fee hearing, or at any time thereafter that
8 the Trustee so desires, subject to the approval of the Trust Board and an order of the Court and
9 payment of any fees and expenses owing to the Escrow Agent LNBVB for serving as the
10 Disbursing Agent as described above, the Trustee may appoint a different disbursing agent
11 ("Alternative Disbursing Agent") for the purpose of making the distributions under this Plan as
12 described above. The Alternative Disbursing Agent shall be a person or entity satisfactory to the
13 Trust Board and approved by the Court and shall serve without a bond. The Alternative
14 Disbursing Agent shall be entitled to reasonable compensation and reimbursement of all
15 reasonable and actual costs and expenses incurred in performing its duties under this Plan.
16 Following the appointment of any Alternative Disbursing Agent, the Escrow Agent LNBVB shall
17 thereafter be absolved of any further responsibility, obligation or liability to the Estates resulting
18 from serving as the Escrow Agent and/or the Disbursing Agent.
19

20 **H. Exemption from Transfer Taxes.**
21

22 Pursuant to § 1146(c) of the Bankruptcy Code, the issuance, transfer or exchange of a
23 security, or the making or delivery of an instrument of transfer under a plan confirmed under §
24 1129 of the Bankruptcy Code, may not be taxed under any law imposing a stamp tax or similar
25 tax. Transfers under this Plan that are exempt from taxes under § 1146(c) of the Bankruptcy
26 Code include all transfers by the Debtors after the commencement of the Cases in contemplation
27 of this Plan but prior to the Effective Date, and all transfers to and by the Trustee as contemplated
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1 by this Plan and the Trust, including all payments made to claim holders and Shareholders in
2 accordance with the terms of this Plan and the Trust. The taxes from which such transfers are
3 exempt include stamp taxes, recording taxes, sales and use taxes, transfer taxes, and other similar
4 taxes.

5
6 **I. Executory Contracts and Unexpired Leases.**

7 As indicated above, pursuant to the Sale Order, all of the Debtors' executory contracts and
8 unexpired leases that were not assumed and assigned to BBI were deemed rejected as of the Sale
9 Closing, with the exception of the two supplier agreements with GGS and Grainger whose
10 rejection can happen only following the entry of an order of the Court approving such rejection.
11 In accordance with the Sale Order, the Debtors have already provided notice to all counter-parties
12 to all rejected executory contracts and unexpired leases of their bar date for filing any rejection
13 damage claims against the Estates. That rejection bar date is December 27, 2017, with one
14 exception involving an executory contract that the Debtors only recently learned about who has
15 been served with a separate rejection bar date notice. Following the entry of the Court order
16 approving the Debtors' rejection of the two supplier agreements with GGS and Grainger, the
17 Debtors will provide GGS and Grainger with a thirty-day notice to file any contract rejection
18 claim they wish to assert.
19

20
21 **J. Changes in Rates Subject to Regulatory Commission Approval.**

22 The Debtors are not subject to any governmental regulatory commission approval of their
23 rates.

24 **K. Administrative Claims Bar Date.**

25 In connection with the confirmation of this Plan, the Plan Proponents will be requesting
26 the Court to establish the date that is thirty days following the date of entry of the Plan
27 Confirmation Order as the deadline for any creditor to assert an administrative claim against the
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1 Estates (the “Administrative Claims Bar Date”). Provided the Court agrees, the Administrative
2 Claims Bar Date and the procedure that creditors will be required to follow in order to assert a
3 timely administrative claim against the Estates will be included in the Plan Confirmation Order.
4 As part of the notice of Plan confirmation that the Debtors will distribute to all creditors and
5 Shareholders, the Debtors will provide notice of the Administrative Claims Bar Date. In order to
6 assert a timely administrative claim, a creditor must file a pleading with the Court by the
7 Administrative Claims Bar Date in which the creditor indicates the amount of its asserted
8 administrative claim and attaches as an exhibit all documentary evidence in support of its asserted
9 administrative claim and serve that pleading on counsel for the Debtors and counsel for the
10 Trustee. The creditor is not required to set the matter for hearing. Any creditor who fails to file a
11 timely administrative claim shall be forever barred from asserting any administrative claim
12 against the Debtors, the Estates, or the Trust. The Trustee shall be required to file with the Court
13 any objection to any asserted administrative claim by the date that is ninety days after the
14 Effective Date and to set the matter for hearing. If the Trustee and the creditor are able to resolve
15 any dispute consensually, the Trustee may file a stipulation and proposed order with the Court
16 without the need to set the matter for hearing, with the stipulation to be signed by the Trustee and
17 the creditor. If the Trustee fails to file a timely objection to any timely filed administrative claim,
18 the timely filed administrative claim shall be deemed permanently allowed and must be paid in
19 full by the Trustee out of the Trust Property. The foregoing deadlines for the filing of
20 administrative claims by the Administrative Claims Bar Date shall not apply to the professionals
21 employed in the Cases by the Debtors, the OCUC or the OCEH. The deadline for such
22 professionals to file their final applications for fees and expenses shall be set by the Court in the
23 Plan Confirmation Order.

24 **L. Assignment of all Causes of Action, Including Avoidance Actions, to the Trust.**
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1 On the Effective Date, pursuant to § 1123(b)(3) of the Bankruptcy Code, the standing and
2 the exclusive authority to assert, prosecute, defend and/or settle on behalf of the Estates any and
3 all claims and causes of action that belong to the Estates, including the Radians Claim Objection
4 and Lawsuit, will be automatically assigned and transferred to the Trust (the “Transferred Claims
5 and Causes of Action”). Thereafter, the Trustee, with all powers and authority of a debtor in
6 possession or trustee under the Bankruptcy Code, will be the sole representative of the Estates
7 with the standing and authority to assert, prosecute, defend and/or settle the Transferred Claims
8 and Causes of Action. In the course of any ongoing investigations, the Trustee shall have the
9 right post-confirmation to utilize Bankruptcy Rule 2004 examinations, to be enforced pursuant to
10 Bankruptcy Rule 2005.
11

12 On November 21, 2017, as docket number 244, the Debtors and the OCEH filed a joint
13 motion with the Court seeking an order of the Court: (1) granting leave, standing, and exclusive
14 authority to the OCEH to assert, prosecute and/or settle on behalf of the Estates, subject to Court
15 approval, any and all claims, objections and causes of action against Cordes and Aisenberg (the
16 Debtors’ former officers), and counter claims and defenses against any of the claims asserted by
17 Cordes and Aisenberg, including those claims asserted in their proofs of claim against the
18 Debtors; and (2) approving that certain *Stipulation Granting Standing To Pursue Certain Estate*
19 *Based Claims For The Benefit Of The Debtors’ Estates* (the “Cordes/Aisenberg Assignment
20 Stipulation”) filed concurrently therewith. The hearing on that motion is scheduled to be held on
21 December 12, 2017. That motion was granted by the Court. As a result, all rights assigned to the
22 OCEH by the Cordes/Aisenberg Assignment Stipulation will, on the Effective Date, be
23 automatically assigned and transferred to the Trust and are included within the Transferred
24 Claims and Causes of Action.
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1 Without limiting the foregoing, the Trustee, acting on behalf of the Liquidating Debtor,
2 shall accede to and become the holder of all rights in and to any confidentiality agreements, joint
3 defense agreements, and privilege agreements. Any proceeds received from or on account of the
4 Transferred Claims and Causes of Action shall constitute assets of the Estates and shall vest
5 entirely in the Trust.
6

7 Because these are solvent Estates, no preference actions may be pursued because the
8 Estates would not be able to satisfy the condition of § 547(b)(3) or (5) of the Bankruptcy Code.
9 As a result, it is not necessary for the Debtors, the Trustee or any other party to perform any
10 preference analysis.

11 **M. Objections to Claims.**

12 On and following the Effective Date, the Trustee shall be the sole party with the standing
13 to commence or to continue with the prosecution of any objections to claims in the Cases with
14 respect to any remaining outstanding claims existing on the Effective Date (the "Disputed
15 Claims"). The Trustee shall be required to file objections to all Disputed Claims by no later than
16 ninety days following the Effective Date (unless the Trustee deems the amount in dispute to be
17 insignificant and not warrant further objection), provided that, such date shall not bar later
18 objections. The Trustee shall be required to file with the Court all objections to all Disputed
19 Claims by the date that is ninety days after the Effective Date and to set the matter for hearing. If
20 the Trustee and the creditor holding the Disputed Claim are able to resolve any dispute
21 consensually, the Trustee may file a stipulation and proposed order with the Court without the
22 need to set the matter for hearing, with the stipulation to be signed by the Trustee and the creditor
23 holding the Disputed Claim. If the Trustee fails to file a timely objection to any Disputed Claim,
24 the Disputed Claim shall be deemed permanently allowed and must be paid in full by the Trustee
25 out of the Trust Property.
26
27
28

1 The Trustee will continue with the prosecution of any objections to claims (the “Pending
2 Claims Objections”) that were commenced by the Debtors, the OCEH or any other party in
3 interest prior to the Effective Date but not yet resolved by the Effective Date. The Trustee will
4 have the authority, in the Trustee’s sole discretion and in the reasonable exercise of the Trustee’s
5 business judgment (subject to the Trust Board’s approval), to withdraw any such pending
6 objections or settle or compromise any Pending Claims Objections following the Effective Date
7 without further notice to creditors or Shareholders or authorization of the Court, in which event
8 such claim shall be deemed to be an Allowed Claim in the amount compromised for purposes of
9 this Plan and paid in full by the Trustee from the Trust Property, provided however, pursuant to
10 Article 11(a) of this Plan, the Court shall retain jurisdiction to hear and adjudicate the allowance
11 or disallowance of all Pending Claims Objections.
12

13
14 As provided by § 502(c) of the Bankruptcy Code, the Court may estimate for purpose of
15 allowance any contingent or unliquidated claim, the fixing or liquidation of which, as the case
16 may be, would unduly delay the administration of the Cases. As more fully set forth below in
17 Article 11(a) of this Plan, the Court shall retain jurisdiction over the Liquidating Debtor, the
18 Trust, the Cases and the Estates to resolve or adjudicate all such objections to claims following
19 the Effective Date regardless of whether such objections to claims were first commenced before
20 or after the Effective Date. Nothing contained in this Plan shall constitute a waiver or release by
21 the Trustee of any rights of setoff or recoupment, or of any defense, the Trustee may have with
22 respect to any claim or interest.
23

24 VI. THE TRUST

25 A. Transfer of Property to the Trust.

26 On the Effective Date, or as soon thereafter as is reasonably practicable, the Escrow Agent
27 will transfer to the Trustee for deposit into the Trust all of the Remaining Estate Funds after
28

deducting or reserving for each of the following: (1) all disputed tax claims in the amounts asserted by the taxing agencies; (2) all Disputed Class 1 Claims in the amounts asserted by the class 1 claimants; and (3) the full amount of the fees and expenses requested by all of the professionals employed in the Cases (recognizing that these figures will not become known until all such professionals filed their final applications for fees and expenses incurred through the Effective Date which necessarily will occur at some point after the Effective Date). If the Trustee chooses a disbursing agent other than the Escrow Agent, the Escrow Agent shall, in accordance with an order of the Court, transfer all of the Residual Estate Funds to the new disbursing agent.

On the Effective Date, except as otherwise provided above, the Debtors will transfer to the Trustee for deposit into or for the benefit of the Trust all (1) funds remaining in the Debtors' operating accounts on the Effective Date (after taking into account any outstanding issued but not yet cleared checks and any normal operating expenses incurred through the Effective Date but not yet paid by the Effective Date), (2) all rights of the Estates to any refunds or other monies owing to the Debtors which were not sold to BBI, and (3) all rights of the Estates to any other monetary recoveries obtained by the Trust after the Effective Date. All of the foregoing property, plus any other assets owned by the Debtors or the Estates, including, without limitation, the "Retained Assets" under the APA, including (i) the equity securities and other interests of ICPW Nevada in ICPW California, (ii) insurance policies and all rights, claims, creditors or causes of action thereunder or in connection with, and (iii) all right, title and interest in all claims and causes of action (including the Transferred Claims and Causes of Action, together with all rights of recovery or set-off, shall constitute property of the Trust (collectively, the "Trust Property").

The Trust Property shall be transferred to the Trust created pursuant to the Trust Agreement. All payments to Shareholders shall be paid by the Trustee from cash on hand and such payments will be made as and when provided in and in accordance with the Trust

1 Agreement.

2 **B. The Trust Agreement.**

3 An initial draft of the Trust Agreement is attached hereto as Exhibit “2.” The Trust
4 Agreement, including the designation of the trustee (the “Trustee”) thereunder, shall be approved
5 by the Court, and the designated Trustee shall accept his or her duties thereunder on or before the
6 Plan Confirmation Hearing. The Trust Agreement shall, among other matters, create the Trust,
7 identify the Trustee as the initial trustee of the Trust, identify the compensation of the Trustee,
8 and specify the authorities and powers of the Trustee and the Trust Board consistent with this
9 Plan. The Plan Proponents will file the final version of the Trust Agreement with the Court and
10 the proposed initial compensation of the Trustee at least ten days prior to the Plan Confirmation
11 Hearing.
12

13 **C. Funding of the Trust.**

14 The Trust will be funded with the Trust Property. It will be the responsibility of the
15 Trustee at all times to maintain a sufficient amount of Trust Property to enable the Trustee to pay
16 from the Trust Property all taxes owing by the Estates, including any taxes owing by the Estates
17 from the Debtors’ asset sale to BBI. That portion of the Remaining Estate Funds transferred by
18 the Escrow Agent to the Trust shortly after the Effective Date will serve as the primary funding of
19 the Trust.
20

21 **D. Management of the Liquidating Debtor by the Trustee and Primary Functions of the**
22 **Trust.**

23 (1) Powers and Duties. On and after the Effective Date, the Trustee shall be
24 responsible for implementation of this Plan, including with respect to the management, control
25 and operation of the Liquidating Debtor. The appointment, duties and powers of the Trustee are
26 as set forth in Article III of the Trust Agreement. The establishment and role of the Trust Board
27
28

are as set forth in Article IV of the Trust Agreement. The administration of the Trust, including the rights, powers and privileges of the Trustee, is as set forth in Article V of the Trust Agreement. The distributions from the Trust are as set forth in Article VI of the Trust Agreement. An explanation of the Trust Beneficiaries is as set forth in Article VII of the Trust Agreement. An explanation of the third party rights, limitation of liability and indemnity provisions is as set forth in Article VIII of the Trust Agreement. An explanation of the selection, removal and compensation of the Trustee is as set forth in Article IX of the Trust Agreement.

(2) Tax Treatment. (A) The Trust is intended to be treated for federal income tax purposes as a liquidating trust within the meaning of Treasury Regulation section 301.7701-4(d), for the benefit of the holders of Class 2 interests. The Trust shall be a grantor trust as defined in Section 671 of the Code with each holder of Class 2 interests treated as a grantor of the Trust.

(B) For all U.S. federal income tax purposes, all parties shall treat the transfer of assets by the Debtors to the Trust for the benefit of the holders of Class 2 interests, as (i) a transfer of the assets of the Debtors directly to the holders of Class 2 interests, followed by (ii) the transfer by such persons to the Trust of such assets in exchange for beneficial interests in the Trust. Accordingly, the holders of Class 2 interests shall be treated for federal income tax purposes as the grantors and owners of their respective shares of the applicable assets of the Trust.

(C) The Trust Agreement provides for (i) the Trust to determine the fair market value of the Trust Assets, (ii) the Trust to provide the fair market value determinations to each Trust Beneficiary, and (iii) consistent valuation of the Trust Assets by the Trustee and the Trust Beneficiaries for federal income tax purposes.

E. Operations of the Trust.

From and after the Effective Date, the Trust may use and dispose of Trust Property, and take any of the actions consistent with this Plan and/or the Trust Agreement without the approval

of the Court and free of the restrictions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules, provided that the Trust will be administered so that it qualifies as a liquidating trust under Treasury Regulation § 301.7701-4(d). The actions of the Trust and the Trustee shall be subject to the supervision and approval of the Trust Board as provided in this Plan and the Trust Agreement.

In addition to all other powers and authorities provided to the Trustee under the Trust Agreement, under this Plan and subject to the Trust Agreement, the Trustee, with the oversight of the Trust Board, shall have the power and authority to perform the following acts:

- (1) Manage and protect the Trust Property;
- (2) Administer the Stock Incentive Plan;
- (3) Effectuate the wind down and ultimate dissolution of the Debtors as legal entities as set forth above)
- (4) Address any outstanding issues with the SEC;
- (5) Analyze the Transferred Claims and Causes of Action, and any other claims, counterclaims and defenses the Trustee deems appropriate, and decide (i) whether to pursue any of the foregoing, and (ii) how to pursue them, all with the goal of maximizing the net recovery for the Trust for the Record Holders, provided, however, that the Trust Board must unanimously take any decision to initiate, settle or compromise any litigation in the name of the Trust or the Debtors against any former officer or director of the Debtors;
- (6) File and prosecute objections to all Disputed Claims as the Trustee deems appropriate;
- (7) Pursue claims, counterclaims, and causes of action assigned to the Trust or the control of which is assumed by the Trust pursuant to this Plan, as the designated representative of the Estates, and compromise or adjust, by arbitration or otherwise, any claims, disputes or controversies in favor of or against the Trust;
- (8) Institute on behalf of the Trust all claims and causes of action which could be brought by a trustee or debtor-in-possession under the Bankruptcy Code, and prosecute or defend all appeals on behalf of the Debtors, as representative of the Debtors within the meaning of § 1123(b)(3)(B) of the Bankruptcy Code;
- (9) Settle, compromise or adjust, by arbitration or otherwise, any claims, disputes or controversies in favor of or against the Trust;
- (10) Waive or release rights of any kind;
- (11) Deposit Trust Property and make disbursements thereof;

- (12) Employ and have such professionals, including, without limitation, attorneys and accountants, and such other agents, consultants and employees on behalf of the Trust as the Trustee shall deem necessary, provided that the Trustee's authority to pay such professionals shall be governed by the provisions of this Plan and the Trust Agreement.
- (13) Exercise any and all powers granted to the Trustee by any agreements or by common law or any statute which serves to increase the extent of the powers granted to the Trustee hereunder and in the Trust Agreement;
- (14) Take any action required or permitted by this Plan;
- (15) Negotiate, renegotiate and enter into contracts and execute obligations negotiable and non-negotiable;
- (16) Pay post-Effective Date quarterly fees to the U.S. Trustee from Trust Property;
- (17) Prepare and file post-confirmation quarterly reports with the U.S. Trustee and post-confirmation status reports with the Court as required;
- (18) Retain a sufficient amount of Trust Funds equal to the amount of any estimated post-petition tax obligations until such time as the exact amount of such estimated post-petition tax obligations is determined and paid by the Trustee out of the Trust Property; and
- (19) File and obtain final decrees closing the Cases.

F. Limitation of Liability of the Trustee and the Trust Board.

The Trustee and the Trust Board Members, and their attorneys, accountants, consultants, employees, agents and assignees, shall have no liability for any error of judgment made in good faith other than as a result of gross negligence or willful misconduct. The Trustee and the Trust Board shall not be liable for any action taken or omitted in good faith and believed to be authorized within the discretion or rights or powers conferred upon them by this Plan and the Trust Agreement. In performing their duties hereunder and in accordance with the Trust Agreement, the Trustee and the Trust Board Members may consult with counsel selected by them, at the expense of the Trust. No provisions of this Plan shall require the Trustee or any of the Trust Board Members to expend or risk his/her own funds or otherwise incur personal financial liability in the performance of any of his/her duties under this Plan or in the exercise of any of the

Trustee's and the Trustee Board Members' rights and powers. The Trust shall indemnify and hold the Trustee and Trust Board Members harmless, from and against any damages, costs, claims and other liabilities incurred by any of them in connection with their respective duties and responsibilities hereunder, other than those damages, costs, claims and other liabilities that result from such party's gross negligence or willful misconduct. The Trustee may purchase errors and omissions insurance to cover potential liabilities that may be incurred in the Cases, and such cost shall be paid for by the Trust.

G. Compensation for the Trustee and the Trust Board Members after the Effective Date.

The Trustee and each of the Trust Board Members shall be entitled to reasonable compensation for their activities on behalf of the Trust. The terms of such compensation shall be subject to the approval of the Court on or prior to the Effective Date after notice and hearing upon the joint motion of the Plan Proponents, but shall not be subject to the limitations of § 326 of the Bankruptcy Code.

H. Employment of Professionals By the Trustee and Payment of Professional Fees and Expenses By the Trustee Incurred after the Effective Date.

After the Effective Date, the Trust Board and the Trustee may retain any existing professionals and hire additional professionals they desire and deem appropriate to represent them, including any professionals employed by the OCEH, without the need for any further employment agreements or Court orders. The Trustee, under the supervision of the Trust Board, shall have the right to cause the Trust to employ any other professionals that the Trustee deems appropriate to represent the Trust to assist the Trustee to carry out the Trustee's duties in accordance with the Trust Agreement and to compensate such professionals out of the Trust Property without any further order of or supervision by the Court. The OCEH currently

1 anticipates that the Trustee and the Trust Board will retain Dentons US LLP as its bankruptcy and
2 general counsel and Solomon & Cramer LLP as its special litigation counsel.

3 Additionally, after the Effective Date, the Trustee may hire professionals without the
4 requirement that such professionals file employment applications for Court approval of their
5 employment, whether on an hourly, contingency fee or other basis, and without the requirement
6 that such professionals file applications for payment of post-Effective Date fees and expenses on
7 an interim basis; provided, however, that no less frequently than every 180 days, such post-
8 Effective Date professionals and the Trustee shall each file an application with the Court seeking
9 final approval of their respective fees and expenses as previously invoiced or paid by the Trustee
10 on an interim basis, as the case may be. Such applications shall be served on the UST; provided,
11 however, such applications need not be separately served on parties in interest nor be in the
12 format required by the Local Rules of the Bankruptcy Court or the UST's Guidelines, but shall be
13 sufficiently detailed to identify the hours worked, the rates charged and the work performed
14 without disclosure of privileged information. In the case of fees or expenses paid on a basis
15 which is not by billable hours, the application shall include such other, sufficiently specific
16 information so that the Court can otherwise determine the reasonableness of such fees and
17 expenses.
18
19

20 **VII. PAYMENTS AND DISTRIBUTIONS IN GENERAL**

21 **A. Distribution Procedures & Reserve Provisions.**

22 The Trustee, under the supervision of the Trust Board, will determine the timing and
23 amount of distributions that the Trustee will make to the Shareholders from the Trust Property.
24

25 **B. Delivery of Payments.**

26 All payments to be made by the Trustee to the Shareholders shall be made to the best
27 known address on the Record Date by checks issued by regular mail, postage prepaid or by wire
28

1 transfer or other electronic transfer as appropriate. All checks issued by the Trustee to
2 Shareholders shall be null and void (and may be voided by the Trustee) if not negotiated by the
3 recipient within ninety (90) days after the date of issuance thereof.

4 **C. Rounding.**

5 Whenever any payment of a fraction of a cent would otherwise be called for the actual
6 distribution shall reflect a rounding of such fraction down to the nearest cent.

7 **D. Unclaimed Property.**

8 Shareholders have the obligation to provide the Trustee with written notice of any change
9 to their address, which shall be told to the Shareholders in the Plan confirmation notice. Any
10 Shareholder who fails to negotiate a check sent to them by the Trustee for 90 days after the date
11 of issuance thereof shall forfeit all rights to any distribution under this Plan, and shall not be
12 subject to the unclaimed property or escheat laws of any governmental unit. Upon forfeiture, such
13 cash (including interest thereon) shall be made available for re-distribution to all other
14 Shareholders. The Trustee may but is not required, to undertake reasonable efforts, in the
15 Trustee's business judgment, to locate Shareholders whose distributions are returned or whose
16 checks are not negotiated within 90 days after the date of issuance thereof.

17 **VIII. TAX CONSEQUENCES OF THIS PLAN**

18 CREDITORS AND SHAREHOLDERS CONCERNED WITH HOW THIS PLAN MAY
19 AFFECT THEIR TAX LIABILITY SHOULD CONSULT WITH THEIR OWN
20 ACCOUNTANTS, ATTORNEYS, AND/OR ADVISORS (INCLUDING TAX ADVISORS). The
21 following disclosure of possible tax consequences is intended solely for the purpose of alerting
22 readers about possible tax issues this Plan may present to the Estates. The Plan Proponents
23 CANNOT and DO NOT represent that the tax consequences contained below are the only tax
24 consequences of this Plan because the Tax Code embodies many complicated rules which make it
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difficult to state completely and accurately all of the tax implications of any action.

The Plan Proponents do not anticipate that confirmation of this Plan will have any significant or materially negative effect on any tax liability of the Estates. However, the Plan Proponents do believe that it is possible or even likely that the confirmation of this Plan may serve to reduce or eliminate all or a portion of the Debtors' current net operating loss carry forward (NOL). The Plan Proponents have not performed any detailed analysis of the extent to which, if any, the confirmation of this Plan may have on the retention or loss of NOL or ability of any party to use any such NOL in the future. Any NOL which may be preserved through Plan confirmation shall be preserved under and by this Plan. The Plan Proponents have not performed any analysis of, and make no representations regarding, the potential tax consequences to creditors or Shareholders from the confirmation of or implementation of this Plan. Creditors and Shareholders who wish to understand the potential tax consequences to them from the confirmation of or implementation of this Plan should consult with their own personal accountants, attorneys and/or advisors. The various tax related services to be provided by BPE&H, including computing whether the Debtors' prior sale to BBI resulted in any tax consequences to the Estates, is described above.

IX. CONFIRMATION REQUIREMENTS AND PROCEDURES

PERSONS OR ENTITIES CONCERNED WITH CONFIRMATION OF THIS PLAN SHOULD CONSULT WITH THEIR OWN ATTORNEYS BECAUSE THE LAW ON CONFIRMING A PLAN OF REORGANIZATION IS VERY COMPLEX. The following discussion is intended solely for the purpose of alerting readers about basic confirmation issues, which they may wish to consider, as well as certain deadlines for filing claims. The Plan Proponents CANNOT and DO NOT represent that the discussion contained below is a complete summary of the law on this topic.

1 Many requirements must be met before the Court can confirm a plan. Some of the
2 requirements include that this Plan must be proposed in good faith, acceptance of this Plan (which
3 does not apply to this Plan), whether this Plan pays creditors at least as much as creditors would
4 receive in a chapter 7 liquidation, and whether this Plan is feasible. These requirements are not
5 the only requirements for confirmation.
6

7 **A. Who May Vote to Accept/Reject this Plan.**

8 A creditor or interest holder has a right to vote for or against this Plan if that creditor or
9 interest holder has a claim or interest which is both (1) allowed or allowed for voting purposes
10 and (2) classified in an impaired class. As indicated above, all creditors and all Shareholders are
11 not impaired and therefore are not entitled to vote on this Plan because they are conclusively
12 presumed to have accepted this Plan.
13

14 **B. What Is an Allowed Claim/Interest.**

15 Generally, any proof of claim or interest will be allowed, unless a party in interest files an
16 objection to the claim or interest. THE BAR DATE FOR FILING A PROOF OF CLAIM IN
17 THE CASES WAS OCTOBER 20, 2017. A creditor or interest holder may have an allowed
18 claim or interest even if a proof of claim or interest was not timely filed. A claim is deemed
19 allowed if (1) it is scheduled on the Debtors' schedules and such claim is not scheduled as
20 disputed, contingent, or unliquidated, and (2) no party in interest has objected to the claim. A
21 claim is also deemed allowed if (1) it was timely filed, and (2) no party in interest has objected to
22 the claim. An interest is deemed allowed if it is scheduled and no party in interest has objected to
23 the interest.
24

25 **C. What Is an Impaired Claim/Interest.**

26 A class is impaired if this Plan alters the legal, equitable, or contractual rights of the
27 members of that class. For example, a class comprised of general unsecured claims is impaired if
28

1 this Plan fails to pay the members of that class 100% of what they are owed. As indicated above,
2 the Plan Proponents believe that there are no impaired classes under this Plan. The Plan
3 Proponents believe that both class 1 (general unsecured creditors) and class 2 (Shareholders) are
4 not impaired. Parties who dispute the Plan Proponents' characterization of their claim or interest
5 as being impaired or unimpaired may file an objection to this Plan contending that the Plan
6 Proponents have incorrectly characterized the class.
7

8 **D. Who Is Not Entitled to Vote.**

9 The following four types of claims are not entitled to vote on any plan: (1) claims that
10 have been disallowed; (2) claims in unimpaired classes; (3) claims entitled to priority pursuant to
11 Bankruptcy Code §§ 507(a)(2), (a)(3), and (a)(8); and (4) claims in classes that do not receive or
12 retain any value under this Plan. Claims in unimpaired classes are not entitled to vote because
13 such classes are deemed to have accepted this Plan. Claims entitled to priority pursuant to
14 Bankruptcy Code §§ 507(a)(2), (a)(3), and (a)(8) are not entitled to vote because such claims are
15 not placed in classes and they are required to receive certain treatment specified by the
16 Bankruptcy Code. Claims in classes that do not receive or retain any value under this Plan do not
17 vote because such classes are deemed to have rejected this Plan. EVEN IF YOUR CLAIM IS OF
18 THE TYPE DESCRIBED ABOVE, YOU MAY STILL HAVE A RIGHT TO OBJECT TO THE
19 CONFIRMATION OF THIS PLAN.
20
21

22 **E. Treatment of Non-Accepting Classes.**

23 As noted above, even if all impaired classes do not accept this Plan, the Court may
24 nonetheless confirm this Plan if the non-accepting classes are treated in the manner required by
25 the Bankruptcy Code. The process by which non-accepting classes are forced to be bound by the
26 terms of a plan is commonly referred to as "cramdown." The Bankruptcy Code allows this Plan
27 to be "crammed down" on non-accepting classes of claims or interests if it meets all consensual
28

1 requirements except the voting requirements of 1129(a)(8) and if this Plan does not “discriminate
2 unfairly” and is “fair and equitable” toward each impaired class that has not voted to accept this
3 Plan as referred to in 11 U.S.C. § 1129(b) and applicable case law. The Plan Proponents believe
4 that no “cram down” needs to occur in the Cases because there are no impaired classes under this
5 Plan.
6

7 **F. Request for Confirmation Without Any Voting on this Plan.**

8 Under this Plan, there will be no impaired class of creditors because the only class of
9 creditors under this Plan is class 1 (general unsecured creditors), and the class 1 claims are not
10 impaired by this Plan and therefore do not vote on this Plan. Under this Plan, there will be no
11 impaired class of Shareholders because the only class of interests under this Plan is class 2 (the
12 Shareholders), and the class 2 Shareholders are not impaired by this Plan and therefore do not
13 vote on this Plan. Even if the class 2 Shareholders were impaired by this Plan and were entitled
14 to vote on this Plan, and, as a class, did not vote to accept this Plan (despite the fact that the
15 interests of the class 2 Shareholders are represented by the OCEH; the OCEH is a co-proponent of
16 this Plan; and the OCEH would recommend that all class 2 Shareholders vote to accept this Plan),
17 the Plan Proponents believe that this Plan would nevertheless be confirmable by “cramdown”
18 because the conditions of § 1129(b)(2)(C)(ii) will have been satisfied in that no holder of any
19 interest that junior to the interests of the class 2 Shareholders will receive or retain any property
20 under this Plan on account of any such junior interest. In fact, there are no interests that are junior
21 to the interests of the class 2 Shareholders.
22

24 **G. Liquidation Analysis.**

25 Another confirmation requirement is the “Best Interest Test”, which requires a liquidation
26 analysis. Under the Best Interest Test, if a claimant or interest holder is in an impaired class and
27 that claimant or interest holder does not vote to accept this Plan, then that claimant or interest
28

holder must receive or retain under this Plan property of a value not less than the amount that such holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. The Plan Proponents contend that the “Best Interest Test” does not need to be satisfied in the Cases because there are no claimants or interest holders in an impaired class and there are no impaired classes under this Plan.

In a chapter 7 case, the Debtors’ assets would be liquidated by a chapter 7 trustee. Secured creditors are paid first from the sales proceeds of properties subject to their lien. Administrative claims are paid next. Next, unsecured creditors are paid from any remaining sales proceeds, according to their rights to priority. Unsecured creditors with the same priority share in proportion to the amount of their allowed claim in relationship to the amount of total allowed unsecured claims. Finally, Shareholders would receive the balance that remains after all creditors are paid in full.

The Plan Proponents contend that even if the class 2 Shareholders were impaired by this Plan and the “Best Interest Test” had to be satisfied with respect to the class 2 Shareholders, which would mean that the Plan Proponents would have to demonstrate that each class 2 Shareholder who did not vote to accept this Plan must receive or retain under this Plan property of a value not less than the amount that such class 2 Shareholder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code, the “Best Interest Test” would clearly be met for at least the following three reasons: One, under this Plan, the Escrow Agent is paying all Allowed Claims out of the Remaining Estate Funds without charging any disbursing agent fee. In contrast, a chapter 7 trustee would be paid the trustee’s fee (frequently referred to as the trustee’s “handle”) in accordance with the percentage formula set forth in § 326 of the Bankruptcy Code. This is very significant. As indicated above, there is currently approximately \$13,829,001 of Remaining Estate Funds, and the Debtors project having approximately \$350,000

1 in their debtor-in-possession account at the time of the Plan Confirmation Hearing. If the Cases
2 were converted to chapter 7 instead of this Plan being confirmed, and the chapter 7 trustee
3 distributed this total sum of \$14,179,001, the chapter 7 trustee's statutory fee under § 326 of the
4 Bankruptcy Code (i.e., the trustee's "handle") would be approximately \$448,620. In contrast,
5 under this Plan, the Escrow Agent is charging no fee at all for making the payments the Escrow
6 Agent will be making, and the fee structure being charged by the Trustee (even after taking into
7 account the expected compensation to be paid to the Trust Board Members) for making
8 distributions from the Trust will be substantially lower than the percentage formula set forth in §
9 326 of the Bankruptcy Code. Two, a chapter 7 trustee would hire the trustee's own new
10 professionals, which would create great expense and inefficiency of introducing new
11 professionals into the Cases with no familiarity or background of the Cases, rather than the
12 smooth transition of the use by the Estates of the existing professionals who are already intimately
13 familiar with the Cases. Three, Shareholders will receive their money under this Plan much faster
14 than they would in a chapter 7 bankruptcy simply because of the time it takes for a chapter 7
15 trustee to close out a chapter 7 bankruptcy estate and distribute funds. Conversely, the Plan
16 Proponents submit that there would be no advantage of any conversion of the Cases to chapter 7.
17 The Plan Proponents therefore believe that it is clear that Shareholders will receive *more* under
18 this Plan than they would receive in any chapter 7 liquidation of the Debtors.

19 **H. Feasibility.**

20 Another requirement for confirmation involves the feasibility of this Plan, which means
21 that confirmation of this Plan is not likely to be followed by the liquidation, or the need for further
22 financial reorganization, of the Debtors.

23 There are at least two important aspects of a feasibility analysis. The first aspect considers
24 whether the Debtors will have enough cash on hand on the Effective Date to pay all the claims
25

1 and expenses which are entitled to be paid on such date. Since the Debtors already have enough
2 cash on hand (through the Remaining Estate Funds) to pay all the claims and expenses which are
3 entitled to be paid on the Effective Date, this first aspect of Plan feasibility has clearly been
4 satisfied. The second aspect considers whether there will be enough cash over the life of this Plan
5 to make the required Plan payments. Since this Plan is a liquidating Plan, where all Remaining
6 Estate Funds and other funds that are in the Estates or will come into the Estates will all be
7 distributed to holders of allowed claims, with any remaining balance to be paid to Shareholders,
8 this second aspect of Plan feasibility has, by definition, been satisfied.
9

10 **X. RISK FACTORS REGARDING THIS PLAN**

11 Since this Plan is a liquidating Plan, where all Remaining Estate Funds and any other
12 recoveries by or funds in the Estates will be distributed to holders of allowed claims in
13 accordance with the terms of this Plan, with the net balance to Shareholders, there is no traditional
14 “risk” to the ability of the Debtors or the Trust to perform under this Plan.
15

16 **XI. EFFECT OF CONFIRMATION OF THIS PLAN**

17 **A. Retention of Jurisdiction.**

18 After confirmation of this Plan and the occurrence of the Effective Date, in addition to
19 jurisdiction which exists in any other court, the Court will retain such jurisdiction as is legally
20 permissible including for the following purposes:
21

- 22 i. to resolve any and all disputes regarding the operation and interpretation of
23 this Plan and the Plan Confirmation Order;
- 24 ii. to determine the allowance~~ability~~, classification, or priority of claims and
25 interests upon objection by the Debtors, the OCEH or the Trustee, and to consider any objection
26 to claims filed before or after the Effective Date~~whether such objection is filed before or after the~~
27 Effective Date;
28

1 iii. to determine the extent, validity and priority of any lien asserted against
2 any property of the Debtors, property of the Estates or any Trust Property;

3 iv. to construe and take any action to enforce this Plan, the Plan Confirmation
4 Order, and any other order of the Court, [including the Bar Date Order, and to](#) issue such orders as
5 may be necessary for the implementation, execution, performance, and consummation of this
6 Plan, the Plan Confirmation Order and all matters referred to in this Plan and the Plan
7 Confirmation Order, and to determine all matters that may be pending before the Court in the
8 Cases on or before the Effective Date with respect to any person or entity related thereto;

9 v. to determine (to the extent necessary) any and all applications for
10 allowance of compensation and reimbursement of expenses of professionals for the period on or
11 before the Effective Date;

12 vi. to determine any request for payment of administrative expenses;

13 vii. to determine motions for the rejection, assumption, or assignment of
14 executory contracts or unexpired leases filed before the Effective Date and the allowance of any
15 claims resulting therefrom;

16 viii. to determine all applications, motions, adversary proceedings, contested
17 matters, and any other litigated matters instituted during the pendency of the Cases whether
18 before, on, or after the Effective Date;

19 ix. to determine such other matters and for such other purposes as may be
20 provided in the Plan Confirmation Order;

21 x. to modify this Plan under § 1127 of the Bankruptcy Code in order to
22 remedy any apparent defect or omission in this Plan or to reconcile any inconsistency in this Plan
23 so as to carry out its intent and purpose;

1 xi. except as otherwise provided in this Plan or the Plan Confirmation Order,
2 to issue injunctions, to take such other actions or make such other orders as may be necessary or
3 appropriate to restrain interference with this Plan, ~~or~~ the Plan Confirmation Order, any other order
4 of the Court including the Bar Date Order, or the execution or implementation by any person or
5 entity of this Plan or the Plan Confirmation Order;
6

7 xii. to issue such orders in aid of consummation of this Plan and the Plan
8 Confirmation Order, notwithstanding any otherwise applicable non-bankruptcy law, with respect
9 to any person or entity, to the fullest extent authorized by the Bankruptcy Code or Bankruptcy
10 Rules; and

11 xiii. to enter final decrees closing the Cases.

12 **B. Discharge.**

13 The Debtors will not receive a discharge under this Plan because the requirements of §
14 1141 of the Bankruptcy Code necessary for the Debtors to receive a discharge are not present.
15

16
17 **C. Binding Effect of this Plan.**

18 The provisions of the confirmed Plan shall bind the Debtors, the Liquidating Debtor, the
19 Trustee, the Trust Board, the Trust Board Members, and any creditor or Shareholder, whether or
20 not such creditor or Shareholder has filed a proof of claim or proof of interest in the Cases. With
21 respect to any taxes of the kind specified in Bankruptcy Code § 1146(c), this Plan shall also bind
22 any taxing authority, recorder of deeds or similar official for any county, state, or governmental
23 unit or parish in which any instrument related to under this Plan or related to any transaction
24 contemplated under this Plan is to be recorded.
25

26 **D. Revesting of Property Free and Clear.**

27 Upon the Effective Date, except as otherwise provided in this Plan, title to all assets of the
28

1 Estates (“Estate Assets”) shall vest in the Trust for the purposes contemplated under this Plan and
2 shall no longer constitute property of the Estates. Except as otherwise provided by this Plan, and
3 to the full extent allowed by §§ 1141(b) and (c) of the Bankruptcy Code, upon the Effective Date,
4 all Estate Assets shall be free and clear of all claims, liens and interests, including unsecured
5 claims. All unsecured claims against the Debtors or the Estates shall be of no further force or
6 effect except with respect to the rights of holders of Allowed Claims to received payments or
7 distributions as set forth herein. Following the Effective Date, the Trustee may use, acquire or
8 dispose of any Trust Property free of any restrictions imposed by the Court, the Bankruptcy Code
9 or the Bankruptcy Rules and without further approval of the Court, except as may otherwise be
10 required under this Plan, the Plan Confirmation Order or the Trust Agreement. Except as
11 otherwise expressly provided in this Plan, the Plan Confirmation Order or the Trust Agreement,
12 all rights or causes of action belonging to the Estates or the Debtors are hereby preserved and
13 retained for enforcement solely and exclusively by and at the discretion of the Trustee in
14 accordance with the Trust Agreement.
15

16
17 **E. Exculpations and Releases.**

18 To the maximum extent permitted by law, neither the Debtors, the post-petition officers
19 and directors of the Debtors, the Liquidating Debtor, the OCUC, the OCEH, the Trustee, the Trust
20 Board Members, nor any of their employees, officers, directors, shareholders, agents, members,
21 representatives, or professionals employed or retained by any of them, shall have or incur liability
22 to any person or entity for any act taken or omission made in good faith in connection with or
23 related to the Cases or the formulation and implementation of this Plan, or a contract, instrument,
24 release, or other agreement or document created in connection therewith, the solicitation of
25 acceptances for or confirmation of this Plan, or the consummation and implementation of this
26 Plan and the transactions contemplated therein; provided, however, that nothing in this
27
28

1 Exculpation and Release shall release any party ~~other than the Debtors~~ for actions or omissions
2 occurring prior to the commencement of the Cases.

3 **F. Injunctions.**

4 Subject to, and limited to, the provisions of Section XI.(E.) above, the Plan Confirmation
5 Order shall enjoin the prosecution, whether directly, derivatively or otherwise, of any claim,
6 obligation, suit, judgment, damage, demand, debt, right, cause of action, liability or interest
7 released or terminated pursuant to [Section XI.E of](#) this Plan. As of the Effective Date, all entities
8 that have held, currently hold or may hold a claim or other debt or liability that is released or
9 terminated or an interest or other right of a creditor or equity security holder that is released,
10 terminated or extinguished pursuant to the terms of [Section XI.E of](#) this Plan are permanently
11 enjoined from taking any of the following actions against the Debtors, the Liquidating Debtor, the
12 OCUC, the OCEH, the Trustee, the Trust Board Members, and any of their employees, officers,
13 directors, shareholders, agents, members, representatives, or professionals employed or retained
14 by any of them, or their property on account of any such released, terminated or extinguished
15 claims, debts or liabilities or extinguished interests or rights: (i) commencing or continuing, in
16 any manner or in any place, any action or other proceeding; (ii) enforcing, attaching, collecting or
17 recovering in any manner any judgment, award, decree or order; (iii) creating, perfecting or
18 enforcing any lien or encumbrance; and (iv) commencing or continuing any action in any manner,
19 in any place, that does not comply with or is inconsistent with the provisions of [Section XI.E of](#)
20 this Plan. By accepting a distribution made pursuant to this Plan, each holder of an allowed claim
21 and each Shareholder which receives a distribution pursuant to this Plan or the Trust Agreement
22 shall be deemed to have specifically consented to the injunctions set forth in this Section.

23 **G. Exclusions to Exculpations, Releases and Injunctions Under this Plan.**

24 Notwithstanding any language to the contrary contained in this Plan and/or the Plan
25
26
27
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1 Confirmation Order, no provision of this Plan or the Plan Confirmation Order shall (i) preclude
2 the United States Securities and Exchange Commission (“SEC”) or any other governmental
3 agency, including the UST, from enforcing its police or regulatory powers; or, (ii) enjoin, limit,
4 impair or delay the SEC or any other governmental agency, including the UST, from commencing
5 or continuing any claims, causes of action, proceedings or investigations against any non-debtor
6 person or non-debtor entity in any forum.

7
8 **H. Modification of this Plan.**

9 The Plan Proponents reserve the right to modify this Plan at any time before confirmation
10 and seek confirmation of such modified Plan consistent with the Bankruptcy Code. The Plan
11 Proponents may also seek to modify this Plan at any time after confirmation of this Plan but
12 before the Effective Date so long as (1) this Plan has not been substantially consummated and (2)
13 the Court authorizes the proposed modifications after notice and a hearing. Notwithstanding the
14 foregoing, any modification of this Plan, whether before or after confirmation, shall require the
15 consent of both the Debtors or the Liquidating Debtor, as the case may be, and the OCEH or the
16 Trustee, as the case may be.

17
18 **I. Post-Confirmation Status Reports.**

19 Until final decrees closing the Cases are entered, the Trustee shall file quarterly status
20 reports with the Court explaining what progress has been made toward consummation of the
21 confirmed Plan, and the Trustee shall pay the post-confirmation quarterly fees to the UST out of
22 the Trust Property.

23
24 **J. Post-Confirmation Conversion/Dismissal.**

25 A creditor or any other party in interest may bring a motion to convert or dismiss the
26 Cases under § 1112(b) of the Bankruptcy Code after this Plan is confirmed if there is a default in
27 performing this Plan, with the Trustee (and the Liquidating Debtor if the motion is brought before
28

1 the Effective Date) reserving all rights to oppose any such motion. If the Court orders the Cases
2 converted to chapter 7 after this Plan is confirmed, then all property that had been property of the
3 Estates, and that has not been disbursed pursuant to this Plan, will revert in the chapter 7 estates,
4 and the automatic stay will be reimposed upon the revested property, but only to the extent that
5 relief from stay was not previously authorized by the Court during the Cases. The Plan
6 Confirmation Order may also be revoked under very limited circumstances. The Court may
7 revoke the Plan Confirmation Order if it was procured by fraud and if a party in interest brings an
8 adversary proceeding to revoke confirmation within 180 days after the date of entry of the Plan
9 Confirmation Order.
10

11 **K. Final Decrees.**

12 Once the Estates have been fully administered as referred to in Bankruptcy Rule 3022,
13 the Trustee will file a motion with the Court to obtain final decrees to close the Cases. The
14 Trustee shall be responsible for the timely payment of all fees incurred pursuant to 28 U.S.C. §
15 1930(a)(6) and shall pay all such fees out of the Trust Property.
16

17
18 **XII. MISCELLANEOUS**

19 **A. Severability of Plan Provisions.**

20 In the event that, prior to the Plan Confirmation Hearing, any term or provision of this
21 Plan is held by the Court to be invalid, void or unenforceable, the Court shall have the power to
22 alter and interpret such term or provision to make it valid or enforceable to the maximum extent
23 practicable, consistent with the original purpose of the term or provision held to be invalid, void
24 or unenforceable, and such term or provision shall then be applicable as altered or interpreted.
25 Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and
26 provisions hereof shall remain in full force and effect and shall in no way be affected, impaired
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1 or invalidated by such holding, alteration or interpretation. The Plan Confirmation Order shall
2 constitute a judicial determination and shall provide that each term and provision hereof, as it
3 may have been altered or interpreted in accordance with the foregoing, is valid and enforceable
4 pursuant to its terms.

5
6 **B. Governing Law and Headings.**

7 Except to the extent that the Bankruptcy Code or other federal law is applicable, the
8 rights, duties and obligations arising under this Plan shall be governed by, and construed and
9 enforced in accordance with, the laws of the State of California. The headings contained in this
10 Plan are for convenience of reference only and shall not limit or otherwise affect in any way the
11 meaning or interpretation of this Plan.

12
13 **C. Language Interpretation.**

14 In the interpretation of this Plan, unless the context otherwise requires, references in this
15 Plan to the singular shall be construed to include references to the plural and vice versa; words
16 importing the singular shall be deemed to import the plural and vice versa; words denoting
17 gender shall include all genders; references to sections, schedules, and exhibits shall mean
18 sections, schedules, and exhibits of and to this Plan; references to part includes the whole, except
19 where the context clearly requires otherwise “or” has the inclusive meaning represented by the
20 phrase “and/or,” and the words “hereof,” “herein,” “hereunder,” and similar terms in this Plan
21 refer to this Plan as a whole and not to any particular provision of this Plan.

22
23 **D. Exhibits.**

24 All exhibits attached to this Plan are, by this reference, hereby incorporated into this Plan.
25 The final version of all exhibits to this Plan will be substantially in the forms attached hereto or
26 thereto. The Plan Proponents reserve the right to make non-substantive changes and corrections
27 to such exhibits in advance of the Plan Confirmation Hearing. If any exhibits are changed or
28

corrected, the replacement exhibits will be filed with the Court prior to the commencement of the Plan Confirmation Hearing.

E. Notices.

All notices required or permitted to be made in accordance with this Plan shall be in writing and shall be delivered personally or by nationally recognized overnight or next-day courier service, first class mail or via facsimile with electronic confirmation of receipt as follows (but all such notices must also be provided by email as indicated below):

If to the Debtors:
Levene, Neale, Bender, Yoo & Brill L.L.P.
10250 Constellation Blvd., Suite 1700
Los Angeles, CA 90067
Email: rb@lnbyb.com
Attention: Ron Bender

If to the Equity Committee:
Dentons US LLP
601 S. Figueroa Street, Suite 2500
Los Angeles, CA 90017-5704
Email: tania.moyron@dentons.com
Attention: Tania Moyron

F. Computation of Time Periods.

In computing any period of time prescribed or allowed by this Plan, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper in the Court, a day on which weather or other conditions have made the clerk's office inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days.

G. Defects, Omissions and Amendments.

1 The Plan Proponents, with the approval of the Court and without notice to all holders of
2 claims or interests, insofar as it does not materially and adversely affect holders of claims or
3 interests, may correct any defect, omission or inconsistency in this Plan in such manner and to
4 such extent as may be necessary or desirable to expedite the execution of this Plan. This Plan
5 may be altered or amended before or after the Plan Confirmation Hearing as provided in § 1127
6 of the Bankruptcy Code.
7

8 **H. Filing of Additional Documents.**

9 The Plan Proponents shall file with the Court such agreements or other documents as
10 may be necessary or appropriate to effectuate and further evidence the terms and conditions of
11 this Plan.
12

13 **I. Successors and Assigns.**

14 The rights, benefits and obligations of any entity named or referred to in this Plan shall be
15 binding on, and shall inure to the benefit of, the heirs, executors, administrators, successors
16 and/or assigns of such entity.
17
18

19 **J. Implementation.**

20 Upon the confirmation of this Plan and the occurrence of the Effective Date, the Debtors
21 and the OCEH shall be authorized to take all steps and execute all documents necessary to
22 effectuate the provisions contained in this Plan.
23

24 **K. Certain Actions.**

25 By reason of entry of the Plan Confirmation Order, prior to, on or after the Effective Date
26 (as appropriate), all matters provided for under this Plan that would otherwise require approval
27 of the owners, stockholders, shareholders, members, directors, managers, or officers of the
28

1 Debtors under this Plan, including, without limitation, (i) the distribution of cash pursuant to this
2 Plan, (ii) the adoption, execution, delivery, and implementation of all contracts, leases,
3 instruments, releases, and other agreements or documents related to this Plan, and (iii) the
4 adoption, execution, and implementation of other matters provided for under this Plan involving
5 the company or organizational structure of the Debtors, shall be deemed to have occurred and
6 shall be in effect prior to, on or after the Effective Date (as appropriate), pursuant to the
7 applicable general corporation, limited liability, or partnership law of the state in which the
8 Debtors or the Liquidating Debtor is chartered, organized or incorporated, without any
9 requirement of further action by the owners, stockholders, shareholders, members, directors,
10 managers, or officers of the Debtors.
11

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L. Waiver of Ten (10) Day Stay.

The Plan Proponents request as part of the Plan Confirmation Order a waiver from the Court of the ten (10) day stay of Bankruptcy Rule 3020(e) and, to the extent applicable, a waiver of the ten (10) day stay of Bankruptcy Rule 6004(g).

Dated: ~~February 9~~ January 9~~12~~, 2018

Presented By:

LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.

By: /s/ Ron Bender
RON BENDER
MONICA Y. KIM
KRIKOR J. MESHEFEJIAN
Attorneys for Chapter 11 Debtors and Plan Proponents

ICPW Liquidation Corporation, a California corporation, formerly known as Ironclad Performance Wear Corporation, a California corporation, and ICPW Liquidation Corporation, a Nevada corporation, formerly known as Ironclad Performance Wear Corporation, a Nevada corporation

By: _____
GEOFF GREULICH, Chief Executive Office

Presented By:

DENTONS US LLP

By: /s/ Tania M. Moyron
SAMUEL R. MAIZEL
TANIA M. MOYRON
Attorneys for Official Committee of Equity Security Holders

Official Committee of Equity Security Holders

By: _____
SCOTT JARUS, Chairman

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 10250 Constellation Boulevard, Suite 1700, Los Angeles, CA 90067

A true and correct copy of the foregoing document entitled **FIRST SUPPLEMENT TO MOTION IN SUPPORT OF CONFIRMATION OF DEBTORS' AND OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS' JOINT PLAN OF LIQUIDATION DATED JANUARY 12, 2018; MEMORANDUM OF POINTS AND AUTHORITIES** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **February 9, 2018**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Shiva D Beck sbeck@gardere.com, jcharrison@gardere.com
- Ron Bender rb@lnbyb.com
- Cathrine M Castaldi ccastaldi@brownrudnick.com
- Russell Clementson russell.clementson@usdoj.gov
- Aaron S Craig acraig@kslaw.com, lperry@kslaw.com
- Matthew A Gold courts@argopartners.net
- Monica Y Kim myk@lnbrb.com, myk@ecf.inforuptcy.com
- Jeffrey A Krieger jkrieger@ggfirm.com,
kwoodson@greenbergglusker.com;calendar@greenbergglusker.com;jking@greenbergglusker.com
- Samuel R Maizel samuel.maizel@dentons.com,
alicia.aguilar@dentons.com;docket.general.lit.LOS@dentons.com;tania.moyron@dentons.com;kath
ryn.howard@dentons.com
- Krikor J Meshefejian kjm@lnbrb.com
- Tania M Moyron tania.moyron@dentons.com, chris.omeara@dentons.com
- S Margaux Ross margaux.ross@usdoj.gov
- Susan K Seflin sseflin@brutzkusgubner.com
- John M Stern john.stern@oag.texas.gov, bk-mbecker@oag.texas.gov
- United States Trustee (SV) ustpreion16.wh.ecf@usdoj.gov
- Sharon Z. Weiss sharon.weiss@bryancave.com,
raul.morales@bryancave.com;geri.anderson@bryancave.com
- Douglas Wolfe dwolfe@asmcapital.com

2. SERVED BY UNITED STATES MAIL: On **February 9, 2018**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **February 9, 2018**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Served via Attorney Service

Hon. Martin R. Barash
United States Bankruptcy Court
21041 Burbank Boulevard, Suite 342
Woodland Hills, CA 91367

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

February 9, 2018

John Berwick

/s/ John Berwick

Date

Type Name

Signature